

LIEUTENANT GOVERNOR DAVID DEWHURST  
CONFIDENTIAL TRANSCRIPT

7/29/2014

1 (Pages 1 to 4)

<p style="text-align: right;">1</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE SOUTHERN DISTRICT OF TEXAS 3 CORPUS CHRISTI DIVISION 4 MARC VEASEY, et al., ) 5 Plaintiff, ) 6 VS. ) CIVIL ACTION NUMBER: 7 RICK PERRY, et al., ) 2:13-CV-193 (NGR) 8 Defendants. ) 9 UNITED STATES OF AMERICA, ) 10 Plaintiff, ) 11 VS. ) CIVIL ACTION NUMBER: 12 TEXAS LEAGUE OF YOUNG VOTERS ) 2:13-CV-263 (NGR) 13 EDUCATION FUND, et al., ) 14 Plaintiff-Intervenors, ) 15 TEXAS ASSOCIATION OF HISPANIC ) 16 COUNTY JUDGES AND COUNTY ) 17 COMMISSIONERS, et al., ) 18 Plaintiff-Intervenors, ) 19 VS. ) 20 STATE OF TEXAS, et al., ) 21 Defendants. ) 22 TEXAS STATE CONFERENCE OF ) 23 NAACP BRANCHES, et al., ) 24 Plaintiffs, ) CIVIL ACTION NUMBER: 25 VS. ) 2:13-CV-291 (NGR) 26 NANDITA BERRY, et al., ) 27 Defendants. )</p>	<p style="text-align: right;">3</p> <p>1 2 3 A P P E A R A N C E S 4 FOR THE UNITED STATES OF AMERICA: 5 Elizabeth Westfall 6 U.S. JUSTICE DEPARTMENT 7 CIVIL RIGHTS DIVISION 8 Room 7254 NWB 9 950 Pennsylvania Avenue, N.W. 10 Washington, D.C. 20530 11 (202) 514-0828 12 elizabeth.westfall@usdoj.gov 13 14 FOR THE NAMED DEFENDANTS RICK PERRY, ET AL.: 15 16 Reynolds Brissenden 17 John Scott 18 J. Reed Clay, Jr. 19 Assistant Deputy Attorney General 20 ATTORNEY GENERAL OF TEXAS 21 P.O. Box 12548 22 Austin, TX 78711-2548 23 (512) 475-3281 24 reynolds.brissenden@texasattorneygeneral.gov 25 26 FOR THE WITNESS: 27 28 Linda Halpern 29 Manager of Complex Litigation 30 ATTORNEY GENERAL OF TEXAS 31 P.O. Box 12548 32 Austin, TX 78711-2548 MC109 33 (512) 475-1969 34 linda.halpern@texasattorneygeneral.gov 35 36 Brooke Paup 37 Jay Dyer 38 Deputy Division Chief 39 Intergovernmental Relations Division 40 ATTORNEY GENERAL OF TEXAS 41 P.O. Box 12548 42 Austin, TX 78711-2548 43 (512) 936-1381 44 brooke.paup@oag.state.tx.us 45</p>
<p style="text-align: right;">2</p> <p>1 BELINDA ORTIZ, et al., ) 2 ) 3 Plaintiffs, ) 4 VS. ) CIVIL ACTION NUMBER: 5 ) 2:13-CV-348(NGR) 6 STATE OF TEXAS, et al., ) 7 ) 8 Defendants. ) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>*****</p> <p style="text-align: center;">DEPOSITION OF</p> <p style="text-align: center;">LIEUTENANT GOVERNOR DAVID DEWHURST</p> <p style="text-align: center;">JULY 29, 2014</p> <p>*****</p> <p style="text-align: center;">HIGHLY CONFIDENTIAL</p> <p>13 ORAL DEPOSITION OF LIEUTENANT GOVERNOR DAVID 14 DEWHURST, produced as a witness at the instance of the 15 Plaintiff, was duly sworn, was taken in the above-styled 16 and numbered cause on the JULY 29, 2014 from 9:16 a.m. 17 to 7:23 p.m., before Chris Carpenter, CSR, in and for 18 the State of Texas, reported by machine shorthand, at 19 the Office of the Attorney General, 209 West 14th 20 Street, Austin, TX 78701, pursuant to the Federal Rules 21 of Civil Procedure and the provisions stated on the 22 record or attached hereto. 23 24 25</p>	<p style="text-align: right;">4</p> <p>1 Constance Allison 2 LIEUTENANT GOVERNOR'S OFFICE 3 4 FOR TEXAS LEAGUE OF YOUNG VOTERS' EDUCATION FUND AND 5 IMANI CLARK: 6 7 Tania Faransso 8 WILMER HALE 9 1875 Pennsylvania Avenue, NW 10 Washington, DC 20006 11 (202) 663-6262 12 tania.faransso@wilmerhale.com 13 Natasha M. Korgaonkar 14 NAACP LEGAL DEFENSE AND 15 EDUCATIONAL FUND, INC. 16 40 Rector Street, 5th Floor 17 New York, NY 10006-1738 18 (212) 965-2236 19 nkorgaonkar@naacpldf.org 20 21 FOR TEXAS STATE CONFERENCE OF NAACP BRANCHES: 22 Ezra Rosenberg (appearing by phone) 23 DECHERT, LLP 24 ezra.rosenberg@dechert.com 25 26 COUNSEL FOR THE ORTIZ PLAINTIFFS: 27 Marinda van Dalen (appearing by phone) 28 TEXAS RIO GRANDE LEGAL AID, INC. 29 mvandalen@trla.org 30 31 32 33 34 35</p>

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8 20 Talking Points For DHD Call to Members 150	8 A. Good morning.
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<p style="text-align: right;">9</p> <p>1 I'm representing the Ortiz Plaintiffs.</p> <p>2 MR. ROSENBERG: Ezra Rosenberg from</p> <p>3 Dechert LLP representing the Texas State Conference of</p> <p>4 NAACP Branches and the Mexican American Legislative</p> <p>5 Conference.</p> <p>6 MS. WESTFALL: And could the other people</p> <p>7 at the table introduce themselves, please?</p> <p>8 MR. DYER: I'm Jay Dyer with the Attorney</p> <p>9 General's office. I'm here with the witness.</p> <p>10 MS. ALLISON: Constance Allison with the</p> <p>11 Lieutenant Governor's Office.</p> <p>12 MR. REYNOLDS BRISSENDEN: Reynolds</p> <p>13 Brissenden from the Texas Attorney General's Office on</p> <p>14 behalf of the State of Texas.</p> <p>15 MS. PAUP: Brooke Paup with the Attorney</p> <p>16 General for the witness.</p> <p>17 MS. HALPERN: Linda Halpern, Attorney</p> <p>18 General's Office for the witness.</p> <p>19 Q. (By Ms. Westfall) Mr. Dewhurst, have you had</p> <p>20 your deposition taken before?</p> <p>21 A. Yes.</p> <p>22 Q. How many years ago was that?</p> <p>23 A. 12 or 13 years ago.</p> <p>24 Q. Do you remember --</p> <p>25 MS. HALPERN: Counsel, before you begin, I</p>	<p style="text-align: right;">11</p> <p>1 based on legislative privilege, we will have the witness</p> <p>2 go ahead and answer the question if appropriate, but the</p> <p>3 answer will be part of the sealed record, and in so</p> <p>4 answering, this witness is not waiving his legislative</p> <p>5 privilege. Is that clear for everybody on the record?</p> <p>6 MS. WESTFALL: It is clear, and we will</p> <p>7 operate under the same ground rules that we did for</p> <p>8 Senator Fraser's deposition insofar as we would not</p> <p>9 agree to designate the entire transcript as highly</p> <p>10 confidential, but that you would make your objections to</p> <p>11 questions that you believe would elicit testimony that</p> <p>12 would be covered by legislative privilege and the</p> <p>13 witness goes ahead and testifies. We will examine on</p> <p>14 some highly confidential documents. The testimony</p> <p>15 regarding those documents will be designated as highly</p> <p>16 confidential, but the balance of the transcript will not</p> <p>17 be designated as highly confidential. But for</p> <p>18 administrative purposes, the court reporter will</p> <p>19 designate for the time-being the transcript as</p> <p>20 confidential. Do you agree with that?</p> <p>21 MS. HALPERN: That's acceptable to the</p> <p>22 witness.</p> <p>23 MS. WESTFALL: Thank you.</p> <p>24 Q. (By Ms. Westfall) Mr. Dewhurst, I will, since</p> <p>25 it's been a number of years since you had your</p>
<p style="text-align: right;">10</p> <p>1 have a couple of statements I'd like to make for the</p> <p>2 record.</p> <p>3 First of all, it sounds like we have</p> <p>4 three, maybe four discrete parties represented here.</p> <p>5 Under the rules, Plaintiffs are entitled to depose this</p> <p>6 witness for a maximum of seven hours of on-the-record</p> <p>7 time. I want to give everybody notice now that the</p> <p>8 deposition will terminate at the end of seven hours.</p> <p>9 And I would urge Plaintiffs' counsel to confer among</p> <p>10 yourselves and make sure that you allocate your time in</p> <p>11 such a way that Ms. Westfall, as good an examiner as she</p> <p>12 is, doesn't use up everybody else's time, because there</p> <p>13 will no allowances made at the end.</p> <p>14 Second of all, we will be asserting</p> <p>15 legislative privilege from time to time. In keeping</p> <p>16 with our understanding of the judge's ruling in this</p> <p>17 matter with regard to how legislative privilege is to be</p> <p>18 treated, that being that we can either have the witness</p> <p>19 not answer, in which case we all run the risk of having</p> <p>20 to come back here, or having the witness answer but have</p> <p>21 the answer be placed under seal with the understanding</p> <p>22 that plaintiffs will then have to jump through whatever</p> <p>23 hoops the court requires in order for them to be able to</p> <p>24 use that testimony as evidence. For the benefit of all,</p> <p>25 we are going to take that latter course. When I object</p>	<p style="text-align: right;">12</p> <p>1 deposition taken, review the ground rules so you know</p> <p>2 what to expect.</p> <p>3 A few moments ago you were sworn to</p> <p>4 testify and answer questions under oath. Do you</p> <p>5 understand that you are here to -- expected to testify</p> <p>6 truthfully and as completely as possible in response to</p> <p>7 the questions that I will ask you?</p> <p>8 A. Yes.</p> <p>9 Q. The court reporter will prepare a transcript of</p> <p>10 everything that is said here today. Therefore, it is</p> <p>11 very important to listen to my question, wait for me to</p> <p>12 finish my question, and then answer with a verbal</p> <p>13 response and not a shake of the head. Do you</p> <p>14 understand?</p> <p>15 A. Yes.</p> <p>16 Q. Please try to wait for me to finish my question</p> <p>17 before you answer. Otherwise, we will have questions</p> <p>18 and answers that are overlapping, and again, the</p> <p>19 transcript will be difficult to understand. Do you</p> <p>20 understand?</p> <p>21 A. Yes.</p> <p>22 Q. I will try to ask you clear questions, but if</p> <p>23 you don't understand a question that I ask you, feel</p> <p>24 free to ask for a clarification before you answer.</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">13</p> <p>1 Q. If you wish to stop and take a break at any 2 time, please let me know. We can take a break whenever 3 you would like. But I would ask that if there is a 4 question pending, that you go ahead and answer the 5 question first, okay?</p> <p>6 A. Yes.</p> <p>7 Q. Are you on any medication today that would 8 affect your ability to testify truthfully?</p> <p>9 A. No.</p> <p>10 Q. Is there any other reason why you can't testify 11 truthfully today?</p> <p>12 A. No.</p> <p>13 Q. I would like to explain some terms that I'll be 14 using in the deposition. If I refer to Senate Bill 14 15 or SB 14, I will mean Senate Bill 14, which was enacted 16 in 2011 in the 82nd Legislature. Do you understand?</p> <p>17 A. Yes.</p> <p>18 Q. I may refer to you or your office, and that is 19 intended to refer to the entire Lieutenant Governor's 20 Office. Do you understand?</p> <p>21 A. Yes.</p> <p>22 Q. And when I refer to the term minority voters, I 23 intend to refer to voters who are not Anglo. Do you 24 understand?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">15</p> <p>1 Q. Has your office provided these documents to 2 your counsel?</p> <p>3 A. I would have to ask counsel, but I've asked my 4 counsel in the Lieutenant Governor's Office to -- to 5 search for documents and if found, to turn them over to 6 you.</p> <p>7 Q. Thank you. Have you done -- conducted the 8 search in 2014 or was this in 2012?</p> <p>9 A. This was in 2014.</p> <p>10 Q. Thank you.</p> <p>11 MS. WESTFALL: Counsel, for the record, I 12 don't believe we have received a production of documents 13 in the custody of the Lieutenant Governor's Office this 14 year. I'd ask that you follow-up on that and see if 15 there are any documents to be produced.</p> <p>16 MS. HALPERN: I know that we produced 17 whatever we had.</p> <p>18 MS. WESTFALL: Thank you.</p> <p>19 Q. (By Ms. Westfall) How do you communicate with 20 your staff?</p> <p>21 A. Verbally.</p> <p>22 Q. Do you use e-mail at all?</p> <p>23 A. I use -- during the time in question, I did not 24 use e-mail.</p> <p>25 Q. You mean between 2005 and 2011?</p>
<p style="text-align: right;">14</p> <p>1 Q. Are you represented by counsel here today?</p> <p>2 A. Yes.</p> <p>3 Q. Who are you represented by?</p> <p>4 A. By these -- by Linda Halpern, Brooke, and by 5 Jay.</p> <p>6 MS. WESTFALL: Would you mark this, 7 please?</p> <p>8 (Exhibits 1 and 2 marked for 9 identification.)</p> <p>10 Q. (By Ms. Westfall) You have been handed what's 11 been marked as Exhibits 1 and 2 in your deposition. Do 12 you recognize either of these documents?</p> <p>13 A. Yes.</p> <p>14 Q. And what is Exhibit Number 1?</p> <p>15 A. Exhibit 1 is a subpoena to appear at the 16 deposition this morning.</p> <p>17 Q. What is Exhibit Number 2?</p> <p>18 A. It's a subpoena to produce documents, 19 information or objects or to permit inspection of 20 premises in a civil action.</p> <p>21 Q. Sir, has your office searched for documents in 22 response to the documents subpoena?</p> <p>23 A. Yes.</p> <p>24 Q. Has your office completed its search?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">16</p> <p>1 A. That is correct.</p> <p>2 Q. When did you start to use e-mail?</p> <p>3 A. In 2012-2013. And then -- and then it was not 4 used primarily. I believe I misunderstood your 5 question. I didn't start using e-mail for my business 6 and personal communication until 2011 or 2012 -- late 7 2011, 2012, but I didn't use it for office 8 communication.</p> <p>9 Q. Did you not start to use e-mail until after May 10 27, 2011?</p> <p>11 A. I started using e-mail after May 27, 2011.</p> <p>12 Q. Did you prepare for today's deposition?</p> <p>13 A. I met with counsel.</p> <p>14 MS. HALPERN: Yes. That's a "yes" or "no" 15 question.</p> <p>16 A. Yes.</p> <p>17 Q. (By Ms. Westfall) How did you prepare?</p> <p>18 A. I met with counsel for several hours yesterday 19 afternoon.</p> <p>20 Q. And was your counsel -- you met with 21 Ms. Halpern?</p> <p>22 A. I met -- I met with Ms. Halpern.</p> <p>23 Q. Who else was present in that meeting?</p> <p>24 A. Brooke and Jay.</p> <p>25 Q. Did you review any documents at that meeting?</p>

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<p style="text-align: right;">17</p> <p>1 <b>A. I --</b></p> <p>2 MS. HALPERN: "Yes" or "no" question.</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. (By Ms. Westfall) Which documents?</p> <p>5 <b>A. I looked at depositions by Mr. Hebert.</b></p> <p>6 Q. Anything else?</p> <p>7 MS. HALPERN: I'm going to object on the</p> <p>8 grounds that it invades the attorney work product.</p> <p>9 MS. WESTFALL: General categories of</p> <p>10 documents, may I examine him on the general categories?</p> <p>11 MS. HALPERN: No, I'm going to say that</p> <p>12 invades attorney work product.</p> <p>13 Q. (By Ms. Westfall) In addition to the</p> <p>14 deposition transcript of Mr. Hebert, did you review any</p> <p>15 exhibits to that deposition transcript?</p> <p>16 <b>A. No.</b></p> <p>17 Q. Other than your attorney, did you speak to</p> <p>18 anyone about your deposition today?</p> <p>19 <b>A. No.</b></p> <p>20 Q. Did you speak to Julia Rathgaber?</p> <p>21 <b>A. No.</b></p> <p>22 Q. Did you speak to Mr. Hebert?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. Is he representing you in this action as your</p> <p>25 counsel? Do you know?</p>	<p style="text-align: right;">19</p> <p>1 your educational background. Could you tell me what</p> <p>2 your educational background is. Where did you go to</p> <p>3 college?</p> <p>4 <b>A. I graduated from the University of Arizona.</b></p> <p>5 Q. Were you awarded a degree?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. What year?</p> <p>8 <b>A. In 1967.</b></p> <p>9 Q. Did you --</p> <p>10 <b>A. A Bachelor of Arts.</b></p> <p>11 Q. Did you obtain any postgraduate education?</p> <p>12 <b>A. Yes. I attended Georgetown Law School.</b></p> <p>13 Q. Did you obtain a degree?</p> <p>14 <b>A. No, ran out of money.</b></p> <p>15 Q. Was there a time when you first became elected</p> <p>16 to an elected office in the state of the Texas?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. When was that?</p> <p>19 <b>A. I took office as Texas land commissioner in</b></p> <p>20 <b>January 1999.</b></p> <p>21 Q. How many terms did you serve as land</p> <p>22 commissioner?</p> <p>23 <b>A. One term.</b></p> <p>24 Q. Were you elected to a different position after</p> <p>25 that term?</p>
<p style="text-align: right;">18</p> <p>1 <b>A. Mr. Hebert is my general counsel so I rely on</b></p> <p>2 <b>Mr. Hebert. I'm not sure how to answer your question.</b></p> <p>3 Q. Could you tell me the general nature of that</p> <p>4 conversation?</p> <p>5 MS. HALPERN: I'm going to object to the</p> <p>6 extent that -- to the extent that Mr. Hebert is his</p> <p>7 general counsel, I think you are invading the attorney-</p> <p>8 client privilege. I'm going to direct him not to answer</p> <p>9 questions about at conversations he's had with Bryan</p> <p>10 Hebert.</p> <p>11 MS. WESTFALL: Mr. Hebert is also a fact</p> <p>12 witness in this action, Counsel.</p> <p>13 Q. (By Ms. Westfall) Did you discuss his</p> <p>14 testimony in his deposition?</p> <p>15 <b>A. No.</b></p> <p>16 Q. Did you speak with Senator Fraser about his</p> <p>17 deposition?</p> <p>18 <b>A. No.</b></p> <p>19 Q. Did you speak with Representative Harless about</p> <p>20 her deposition?</p> <p>21 <b>A. No.</b></p> <p>22 Q. Did you bring any notes or documents with you</p> <p>23 today?</p> <p>24 <b>A. No.</b></p> <p>25 <b>Q. I'm going to briefly go over a little bit of</b></p>	<p style="text-align: right;">20</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. What was that position?</p> <p>3 <b>A. Lieutenant Governor of the State of Texas.</b></p> <p>4 Q. When were you elected to that position?</p> <p>5 <b>A. I was elected in November 2002.</b></p> <p>6 Q. Were you reelected to that position?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. What year was that?</p> <p>9 <b>A. 2006 and 2010.</b></p> <p>10 Q. Earlier this year, did you run for reelection</p> <p>11 again?</p> <p>12 <b>A. I did.</b></p> <p>13 Q. And what was the outcome of that election?</p> <p>14 <b>A. I lost the runoff election.</b></p> <p>15 Q. When do you complete your current term?</p> <p>16 <b>A. Mid-January 2015.</b></p> <p>17 Q. How many employees do you have in your office</p> <p>18 currently?</p> <p>19 <b>A. Currently, approximately 35.</b></p> <p>20 Q. Since 2005, who in your office has been</p> <p>21 responsible for handling Voter ID issues?</p> <p>22 <b>A. Since I became Lieutenant Governor initially in</b></p> <p>23 <b>2003, when I came in, Spencer Reid, who was our general</b></p> <p>24 <b>counsel. But subsequent to that, Bryan Hebert, when he</b></p> <p>25 <b>joined us as a staff attorney in the mid-2000s.</b></p>



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<p style="text-align: right;">21</p> <p>1 Q. Anyone else?</p> <p>2 A. If memory serves, the subsequent general</p> <p>3 counsel, Frank Battle, was involved on some matters</p> <p>4 involving election laws and perhaps Voter ID.</p> <p>5 Q. Was it -- is it fair to say that Bryan Hebert</p> <p>6 primarily handled all of your Voter ID issues?</p> <p>7 A. That is my current recollection.</p> <p>8 Q. Did Ms. Rathgaber handle any of those issues?</p> <p>9 A. I don't know what you mean by handle those</p> <p>10 issues.</p> <p>11 Q. Was she responsible for providing you advice</p> <p>12 and counsel on Voter ID?</p> <p>13 A. No.</p> <p>14 Q. Did Blaine Brunson provide you with any advice</p> <p>15 or support on Voter ID issues?</p> <p>16 A. I don't know how to answer that question,</p> <p>17 because it's not really responsive to the way a</p> <p>18 legislative office works. Want to rephrase that?</p> <p>19 Q. Certainly. Is there anyone else on staff who</p> <p>20 -- well, let me strike that.</p> <p>21 How is your office organized in terms of</p> <p>22 issues?</p> <p>23 A. Julia Rathgaber was our deputy chief of staff</p> <p>24 and director of policy. And during the period in</p> <p>25 question, I had three chief of staffs, Bruce Gibson, Rob</p>	<p style="text-align: right;">23</p> <p>1 by your office, who was handling Voter ID for you?</p> <p>2 A. I don't remember.</p> <p>3 Q. Could you describe Mr. Hebert's role for you in</p> <p>4 handling Voter ID when he did arrive?</p> <p>5 MS. HALPERN: And let me caution the</p> <p>6 witness that in answering this question, do not reveal</p> <p>7 any attorney-client privilege that you have with</p> <p>8 Mr. Hebert.</p> <p>9 A. The way I organized my office since I first</p> <p>10 came in as Lieutenant Governor, I had nonlawyers as</p> <p>11 policy analysts with responsibilities for different</p> <p>12 committees, and I assigned the different members of my</p> <p>13 legal staff to different committees. And so if -- if my</p> <p>14 memory is correct on this, Bryan Hebert was assigned to</p> <p>15 State Affairs to follow the legislation in that</p> <p>16 committee. And that would include over a period of</p> <p>17 January to early June 2007, 400 to 600 bills.</p> <p>18 Q. (By Ms. Westfall) Those were all election</p> <p>19 bills that went through?</p> <p>20 A. No, no, no. It would be election bills, it</p> <p>21 would be insurance bills, it would be tort reform bills,</p> <p>22 whatever fell under the jurisdiction of State Affairs,</p> <p>23 and I referred to that committee.</p> <p>24 Q. Did Mr. Hebert provide you with legal advice?</p> <p>25 A. From time to time, I would ask Mr. Hebert what</p>
<p style="text-align: right;">22</p> <p>1 Johnson and Blaine Brunson. Having the responsibility</p> <p>2 as Lieutenant Governor to move legislation, some 6,000</p> <p>3 bills that are presented each year, of which I normally</p> <p>4 designate in January, early January of each year, 20 to</p> <p>5 40 priorities, which normally increases during the</p> <p>6 session, I have to rely on my policy director, deputy</p> <p>7 chief of staff and my chief of staff to move bills</p> <p>8 through the process. So that's why I was asking you</p> <p>9 what you meant. Although Julia Rathgaber is a lawyer,</p> <p>10 she, to the best of my memory, never gave me legal</p> <p>11 advice, but we would talk about, over any session, a</p> <p>12 thousand different bills and how to move them to</p> <p>13 committee, out of committee and on to the Floor.</p> <p>14 Q. Who was the staff person who handled Voter ID</p> <p>15 issues for you in 2007?</p> <p>16 A. I don't remember when -- when Bryan Hebert</p> <p>17 joined us, but if he was on staff in 2007, my memory is</p> <p>18 that it would have been Bryan Hebert.</p> <p>19 Q. And when you -- when you refer to the period in</p> <p>20 question, what period are you referring to?</p> <p>21 A. You asked me who was -- who was handling Voter</p> <p>22 ID in 2007. I see. I'm speaking of the Legislative</p> <p>23 session in 2007, from early January 2007 to the end of</p> <p>24 May, early June 2007. Excuse me.</p> <p>25 Q. Very good. Prior to Bryan Hebert being hired</p>	<p style="text-align: right;">24</p> <p>1 he thought on certain issues, and he would tell me what</p> <p>2 he thought.</p> <p>3 Q. And did you consider that to be confidential</p> <p>4 legal advice?</p> <p>5 A. Yes.</p> <p>6 Q. Did he also provide you with policy advice?</p> <p>7 A. From time to time.</p> <p>8 Q. Can you describe the subject matter areas in</p> <p>9 which Mr. Hebert would provide you with policy advice?</p> <p>10 A. The -- the way to structure our -- a piece of</p> <p>11 legislation so that it was consistent with other state</p> <p>12 laws. The options that were available -- and for some</p> <p>13 reason I have in mind eminent domain, but I don't</p> <p>14 remember what committee that went to. But there were</p> <p>15 numbered -- even in an eminent domain bill, which is to</p> <p>16 protect private property rights, there were legal</p> <p>17 considerations, and to make sure that we were consistent</p> <p>18 with current state law and we achieved the goal of what</p> <p>19 we wanted was to protect the private property rights of</p> <p>20 landowners.</p> <p>21 Q. Are you familiar with Senate Bill 14 enacted in</p> <p>22 2011?</p> <p>23 A. We passed Senate Bill 14 in 2011. That was</p> <p>24 three years ago.</p> <p>25 Q. Could you describe that bill generally?</p>

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7 (Pages 25 to 28)

<p style="text-align: right;">25</p> <p>1 <b>A. If you'd like for me to take a look at Senate</b>  2 <b>Bill 14, I'd be glad to, but it was a Photo Voter ID</b>  3 <b>bill.</b>  4 Q. Could you mark this?  5 (Exhibit 3 marked for identification.)  6 Q. (By Ms. Westfall) You've been handed what's  7 been marked as Exhibit 3. Do you recognize this  8 document?  9 <b>A. No, I've never seen it before.</b>  10 Q. Is this -- do you not recognize this as from  11 your campaign website?  12 <b>A. It looks to be, but I've never seen it before.</b>  13 Q. Do you see that on Exhibit 3, it indicates that  14 one of your top accomplishments was passing Voter ID  15 legislation?  16 <b>A. Yes.</b>  17 Q. Do you believe that passing Voter ID  18 legislation was one of your top accomplishments?  19 <b>A. I think it was one of my top accomplishments</b>  20 <b>and one of the top accomplishments that voters all</b>  21 <b>around the state of Texas, whether they be Anglo,</b>  22 <b>African American or Hispanic wanted.</b>  23 Q. Do you continue to believe that today?  24 <b>A. I believe that passing Voter ID among probably</b>  25 <b>a hundred other bills is one of my top accomplishments.</b></p>	<p style="text-align: right;">27</p> <p>1 Q. Does the Lieutenant Governor have sole  2 responsibility for appointing committees and  3 subcommittees?  4 <b>A. Yes.</b>  5 Q. Does the Lieutenant Governor have sole  6 responsibility for selecting and appointing Senate  7 conferees to conference committees?  8 <b>A. Yes.</b>  9 Q. Does the Lieutenant Governor have the duty and  10 the right to rule on points of order?  11 <b>A. Yes.</b>  12 Q. Does the Lieutenant Governor --  13 <b>A. Subject to appeal by the Senators.</b>  14 Q. And that is appealed to whom?  15 <b>A. To the senator -- subject to a appeal by the</b>  16 <b>Senate -- subject to an appeal to all the Senators for a</b>  17 <b>vote.</b>  18 Q. Does the Lieutenant Governor have any powers  19 concerning legislation?  20 MS. HALPERN: Objection, vague.  21 Q. (By Ms. Westfall) You may answer.  22 <b>A. I'm not -- I'm not sure what you meant. We</b>  23 <b>just went through a list of -- of enumerated duties in</b>  24 <b>the Constitution or in the Senate rules, which describes</b>  25 <b>the role the Lieutenant Governor plays in handling</b></p>
<p style="text-align: right;">26</p> <p>1 Q. As Lieutenant Governor, do you serve as  2 president and presiding officer of the Senate?  3 <b>A. Yes.</b>  4 Q. What executive powers does the Lieutenant  5 Governor have?  6 <b>A. What do you mean by executive powers?</b>  7 Q. As opposed to legislative powers.  8 MS. HALPERN: I'm going to object on the  9 grounds it calls for a legal conclusion.  10 Q. (By Ms. Westfall) You may answer.  11 <b>A. When Governor Perry is out of state, I serve as</b>  12 <b>the acting Governor of the state and have done so for --</b>  13 <b>I don't remember the amount of time now, but over six or</b>  14 <b>seven months, over the last number of years.</b>  15 Q. What legislative powers does the Lieutenant  16 Governor have?  17 <b>A. Those granted by the Texas Constitution and the</b>  18 <b>rules of the Senators.</b>  19 Q. Do those include the ability to name a member  20 to perform duties of a chair of a committee?  21 <b>A. Yes.</b>  22 Q. Do you have the sole -- does the Lieutenant  23 Governor have the sole responsibility for referring  24 bills to committee?  25 <b>A. Yes.</b></p>	<p style="text-align: right;">28</p> <p>1 <b>legislation, so if you could rephrase your question.</b>  2 Q. Certainly. Are you -- is the Lieutenant  3 Governor able to introduce legislation in the Senate?  4 <b>A. No.</b>  5 Q. Is the Lieutenant Governor able to develop and  6 advocate with Senators to introduce legislation?  7 <b>A. Yes.</b>  8 Q. Could you describe how that works generally?  9 <b>A. On an ongoing basis, whether we're in session</b>  10 <b>or not, I am constantly reaching out and talking to</b>  11 <b>voters around the state of Texas, all voters. And as --</b>  12 <b>as I develop my thoughts on changes that need to be made</b>  13 <b>in legislation and/or ideas that are brought to me as I</b>  14 <b>travel the state on a continuing basis, I'll talk to</b>  15 <b>staff. If we are in agreement, then -- then I'll ask</b>  16 <b>that -- that we start to research the issue. If I</b>  17 <b>still -- then -- then if I feel strongly about the</b>  18 <b>issue, I'll ask that it be drafted. I'll review the</b>  19 <b>draft, see if it says what I intended it for it to say.</b>  20 <b>And then I'll start to talking to Senators, Republicans</b>  21 <b>and Democrats, to see their reaction and to be able to</b>  22 <b>reach a consensus so the bill can be passed.</b>  23 Q. In addition to Senators' powers and abilities  24 to introduce legislation, which the Lieutenant Governor  25 does not have, are there other powers that members of</p>

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<p style="text-align: right;">29</p> <p>1 the Senate have that you do not have?</p> <p>2 <b>A. Except in the case of a tie or when I am</b></p> <p>3 <b>sitting in a Committee of the Whole, Senators can vote,</b></p> <p>4 <b>the Lieutenant Governor does not vote.</b></p> <p>5 Q. You just anticipated some of my questions.</p> <p>6 When is the Lieutenant Governor permitted to vote?</p> <p>7 <b>A. In the case of a tie when he is -- he or she is</b></p> <p>8 <b>presiding over the Texas Senate or when the Lieutenant</b></p> <p>9 <b>Governor is a member of a Committee of the Whole.</b></p> <p>10 Q. Are there any other circumstances?</p> <p>11 <b>A. Not that I'm aware of.</b></p> <p>12 Q. What is the Committee of the Whole?</p> <p>13 <b>A. A Committee of the Whole is a legislative</b></p> <p>14 <b>process in which I've used a number of times on a number</b></p> <p>15 <b>of different subjects in order to provide all the</b></p> <p>16 <b>Senators voluminous information, pro and con, on an</b></p> <p>17 <b>issue at one time.</b></p> <p>18 Q. How is it convened?</p> <p>19 <b>A. It is convened by my asking a member of the</b></p> <p>20 <b>Senate to call for a Committee of the Whole. And -- and</b></p> <p>21 <b>the Committee of the Whole is activated, and I am -- I</b></p> <p>22 <b>step down temporarily as the presiding officer and I</b></p> <p>23 <b>appoint a chair of the Committee of the Whole. And</b></p> <p>24 <b>traditionally, the Lieutenant Governor takes the chair</b></p> <p>25 <b>of the Senator that has been appointed to be the Chair</b></p>	<p style="text-align: right;">31</p> <p>1 14?</p> <p>2 <b>A. It is my recollection, but I have to go back</b></p> <p>3 <b>and check.</b></p> <p>4 Q. In addition to the Committee of the Whole, does</p> <p>5 the Senate have other committees that handle areas of</p> <p>6 legislation?</p> <p>7 <b>A. Yes, the -- a Senate pursuant to the -- to the</b></p> <p>8 <b>direction of the Lieutenant Governor has standing</b></p> <p>9 <b>committees and special committees.</b></p> <p>10 Q. Where do election bills usually get referred</p> <p>11 to?</p> <p>12 <b>A. Well, all bills are referred at the discretion</b></p> <p>13 <b>of the Lieutenant Governor.</b></p> <p>14 Q. Where do you usually refer election bills?</p> <p>15 <b>A. Historically, I refer them to State Affairs.</b></p> <p>16 Q. Any other committees besides State Affairs?</p> <p>17 <b>A. I don't recall.</b></p> <p>18 Q. After a bill is assigned to the Committee of</p> <p>19 the Whole, does the Committee of the Whole function in</p> <p>20 the same way that other committees do?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Is there any way in which it differs from other</p> <p>23 committees?</p> <p>24 <b>A. I'm not advised.</b></p> <p>25 Q. Does it operate under any other different rules</p>
<p style="text-align: right;">30</p> <p>1 <b>of the Committee of the Whole.</b></p> <p>2 Q. Is it accurate that the Lieutenant Governor</p> <p>3 does not convene, does not have the power to convene the</p> <p>4 Committee of the Whole, another senator does?</p> <p>5 <b>A. That is true.</b></p> <p>6 Q. What types of legislation does the Committee of</p> <p>7 the Whole typically consider?</p> <p>8 <b>A. There's no typical legislation the Committee of</b></p> <p>9 <b>the Whole considers. It can be whatever subject that</b></p> <p>10 <b>the Lieutenant Governor chooses. We have had Committee</b></p> <p>11 <b>of the Whole on redistricting issues. We've had</b></p> <p>12 <b>Committee of the Whole on school finance. And we've had</b></p> <p>13 <b>Committee of the Whole on Voter ID. It is a relatively</b></p> <p>14 <b>common tool where you have a lot of information that</b></p> <p>15 <b>would not be disseminated to two-thirds of your Senate</b></p> <p>16 <b>if it just went through a committee hearing.</b></p> <p>17 Q. Does the Lieutenant Governor have the right to</p> <p>18 debate and vote on all questions in the Committee of the</p> <p>19 Whole?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. When Voter ID was referred to Committee of the</p> <p>22 Whole in 2009 and 2011, did you vote in the Committee of</p> <p>23 the Whole in favor of those bills?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. On both bills? Senate Bill 362 and Senate Bill</p>	<p style="text-align: right;">32</p> <p>1 or procedures from other committees?</p> <p>2 <b>A. I'm not aware of any.</b></p> <p>3 Q. Does the Lieutenant Governor's role, other than</p> <p>4 what you testified to in terms of being able to vote,</p> <p>5 differ in any way when the Committee of the Whole is</p> <p>6 convened?</p> <p>7 MS. HALPERN: Objection, vague. You said</p> <p>8 compared to how another committee operates?</p> <p>9 MS. WESTFALL: Yes.</p> <p>10 Q. (By Ms. Westfall) You may answer.</p> <p>11 <b>A. No, other than the Lieutenant Governor is</b></p> <p>12 <b>normally not a member of a committee -- excuse me, let</b></p> <p>13 <b>me rephrase that. That -- that other than in the</b></p> <p>14 <b>Committee of the Whole, the Lieutenant Governor is not a</b></p> <p>15 <b>member of the committee.</b></p> <p>16 Q. During your tenure as Lieutenant Governor, how</p> <p>17 many times have you referred bills to the Committee of</p> <p>18 the Whole?</p> <p>19 <b>A. I think I've already answered that.</b></p> <p>20 Q. And that was redistricting, school finance and</p> <p>21 Voter ID?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. When did you refer redistricting?</p> <p>24 <b>A. In, if memory serves, in 2003, but it could</b></p> <p>25 <b>have been in 2004.</b></p>



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<p style="text-align: right;">33</p> <p>1 MS. WESTFALL: Could you mark this? 2 (Exhibit 4 marked for identification.) 3 Q. (By Ms. Westfall) You've been handed what's 4 been marked as Exhibit 4. Do you recognize this 5 document? 6 A. No. 7 Q. I will represent to you that this is a printout 8 of bills referred to the Committee of the Whole from the 9 Texas Legislature Online for the regular sessions in 10 2003, 2005, 2007, 2009, 2011 and 2013. Turning your 11 attention now -- 12 A. Well, hold on just a moment. 13 Q. Oh, certainly. Certainly. Certainly, take 14 your time. Let me know when you've had a chance to 15 review it. 16 A. Are you saying that according to this 17 Exhibit 4, which is to refresh my memory, in 2003, there 18 were three bills referred to the Committee of the Whole, 19 and one in 2009 and one in 2011, is that what you're 20 saying? 21 Q. And sir, I'll represent to you that this is the 22 Texas Legislature Online Report that indicates just that 23 with regard to regular sessions, and I'm going to ask 24 you some questions about these bills. Have you had a 25 chance to review Exhibit 4?</p>	<p style="text-align: right;">35</p> <p>1 2003, it -- I knew that there was a strong demand to 2 reduce property taxes, whether local school property 3 taxes or property taxes in general, and these bills were 4 related to that subject. 5 Q. Was -- were these bills controversial or 6 supported by the entire Senate? 7 A. At the beginning of the process, I had a number 8 of Senators who were objecting to what I wanted to do, 9 but we were able to pass -- pass SJR 1 to the -- to the 10 House with a unanimous vote. 11 Q. Are any amendments allowed to be made in the 12 Committee of the Whole? 13 A. Yes. 14 Q. And how quickly do you recall these bills on 15 public finance were voted out of the Committee of the 16 Whole? 17 A. I have -- this was -- this was 2003, 11 years 18 ago, I'm afraid I don't remember. 19 Q. Thank you. 20 A. So you've refreshed my memory and we didn't 21 take up redistricting but we did take up school 22 financing. And on three bills and twice, we had a 23 Committee of the Whole on Voter ID. 24 Q. Sir, do you recall whether there were any 25 special sessions in which, in the intervening years,</p>
<p style="text-align: right;">34</p> <p>1 A. Yes, I looked at it. 2 Q. Certainly, great. Did you in 2003 refer House 3 Bill 5, Senate Bill 2 and SJR 1 related to school 4 finance to the Committee of the Whole? 5 A. Exhibit 4 indicates that I did. 6 Q. Do you recall doing that, sir? 7 A. I recall referring school finance. I don't 8 recall which bill. I haven't -- I didn't have a chance 9 to go back and look at these issues before. 10 Q. Do you recall, sitting here today, why you 11 referred those legislations to the Committee of the 12 Whole? 13 A. Because the Committee of the Whole generally is 14 the best place to provide lengthy public testimony, 15 either for or against a bill, so that all members, all 16 31 hear the public testimony rather than just the 7 or 8 17 of the 31 who are assigned to the committee that is 18 hearing the bill. 19 Q. Was there any need to consider school finance 20 bills on an expedited basis? 21 A. Yes. 22 Q. Was there -- and could you describe those 23 circumstances that caused the need for the Legislature 24 to consider it in an expedited basis? 25 A. When I came into the Legislature in January of</p>	<p style="text-align: right;">36</p> <p>1 when you took up redistricting and you referred it to 2 the Committee of the Whole? 3 A. It is my recollection that we referred 4 redistricting to the Committee of the Whole, but there 5 were three special sessions in 2003 and an additional 6 special sessions in 2011, which we considered 7 redistricting. I'd have to go back and check the 8 records. 9 Q. Turning back to Exhibit 4, is it your belief 10 that this printout, Exhibit 4, is accurate as to the sum 11 total of the bills that you referred to the Committee of 12 the Whole in regular session between 2003 and 2013? 13 A. I would have no reason to believe it's not 14 accurate. 15 Q. Thank you, sir. Was there a photo ID bill 16 introduced in the House in 2007 legislative session? 17 A. In the 2007 legislative session? 18 Q. Yes. 19 A. I do not recall. 20 MS. WESTFALL: Could you please mark this? 21 (Exhibit 5 marked for identification.) 22 Q. (By Ms. Westfall) You've been handed what's 23 been marked as Exhibit 5. 24 A. Uh-huh. 25 Q. Could you just glance at the first page and let</p>

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<p style="text-align: right;">37</p> <p>1 me know when you've had a chance to take a quick glance. 2 I'm not going to ask you detailed questions about the 3 text. 4 <b>A. Yes, I have glanced at the first page, and this</b> 5 <b>is -- yes, I've glanced at it.</b> 6 Q. And does this -- what is this document, sir? 7 <b>A. This is a document, and I don't know whether</b> 8 <b>it's in a filed bill or in an engrossed bill,</b> 9 <b>but this is a copy of House Bill 218. So thank you, you</b> 10 <b>refreshed my memory. There was a Voter ID bill passed</b> 11 <b>or that was presented in the House in the 2007 session.</b> 12 Q. I will represent to you that this Exhibit 5 was 13 pulled from the Texas legislative website. It is the 14 House Bill 218 as engrossed by the House. Did the House 15 pass House Bill 218, is that what -- is that what you 16 just testified to? 17 MS. HALPERN: That's what you just 18 testified to, Counsel. 19 Q. (By Ms. Westfall) Did the House pass House 20 Bill 218? 21 <b>A. I believe so, yes.</b> 22 Q. Engrossed, correct? 23 MS. WESTFALL: I get it now. Thank you, 24 Counsel. 25 Q. (By Ms. Westfall) Do you know when they passed</p>	<p style="text-align: right;">39</p> <p>1 the -- generally, the types of ID that were permissible 2 under House Bill 218? 3 <b>A. If you'll permit me to refresh my memory and</b> 4 <b>look.</b> 5 Q. Certainly, and I may direct your attention to 6 Page 9 of Exhibit 5, in the middle of the page -- 7 <b>A. Yes.</b> 8 Q. -- where it starts, "Documentation of Proof of 9 Identification." Do you see that? 10 <b>A. Yes, I do.</b> 11 Q. And then it continues on to Page 10? 12 <b>A. Yes.</b> 13 Q. If you could -- and actually on to Page 11. If 14 you could take a look at those pages and let me know 15 when you've had a chance to review them. 16 <b>A. All right. I've had a chance to take a look at</b> 17 <b>them.</b> 18 Q. Great. Could you describe generally what types 19 of ID are permitted under House Bill 218? 20 <b>A. Well, other than reading what it says, it's</b> 21 <b>photo identification. Under A or under B, it is</b> 22 <b>additional ID.</b> 23 Q. Does that include nonphoto ID? 24 <b>A. Yes.</b> 25 Q. What was the purpose, to your knowledge, of</p>
<p style="text-align: right;">38</p> <p>1 the bill? 2 <b>A. No, but you may have a legislative record which</b> 3 <b>would refresh my memory.</b> 4 Q. Indeed I do. 5 <b>A. I was hoping for that.</b> 6 <b>(Exhibit 6 marked for identification.)</b> 7 MS. WESTFALL: Let's go off the record for 8 one second. 9 (Discussion off the record.) 10 MS. WESTFALL: Let's go back on the 11 record. Could you hand him Exhibit 6? 12 Q. (By Ms. Westfall) Sir, you've been handed 13 Exhibit 6. 14 <b>A. Uh-huh.</b> 15 Q. What is this document? 16 <b>A. This is a legislative history of -- I'm just</b> 17 <b>looking to make sure that it's -- of House Bill 218.</b> 18 Q. And do you see that it indicates that the House 19 passed 218 on the second page, top of the second page? 20 <b>A. Yes.</b> 21 Q. When did it pass House Bill 218? 22 <b>A. On April 24, 2007.</b> 23 Q. Was that relatively late in the session? 24 <b>A. Yes.</b> 25 Q. Do you recall, turning back to Exhibit 5,</p>	<p style="text-align: right;">40</p> <p>1 House Bill 218? 2 MS. HALPERN: Objection, vague. 3 Q. (By Ms. Westfall) You may answer. 4 <b>A. To pass a bill that the House felt --</b> 5 MS. HALPERN: Objection, nonresponsive to 6 the question she asked you. 7 <b>A. Could you repeat your question?</b> 8 Q. (By Ms. Westfall) Certainly. What was the 9 intent of the House in passing House Bill 218? 10 MS. HALPERN: Objection, no foundation. 11 Objection, calls for speculation. 12 Q. (By Ms. Westfall) You may answer. 13 <b>A. To pass a Voter ID bill that -- that reduced or</b> 14 <b>eliminated fraud.</b> 15 Q. Was that fraud pertaining to in-person voter 16 impersonation at the polls? 17 <b>A. You're asking me to speculate on what was in</b> 18 <b>the mind of the House?</b> 19 Q. I'm asking you what did House Bill 218 seek to 20 accomplish? 21 <b>A. I believe that House Bill 218 was an attempt to</b> 22 <b>-- to reduce fraud in in-person voting, in mail-in fraud</b> 23 <b>and in registration fraud. A predisposition to fraud in</b> 24 <b>any one of the categories would make that person liable</b> 25 <b>to commit fraud in other areas.</b></p>

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11 (Pages 41 to 44)

<p style="text-align: right;">41</p> <p>1 Q. How do you know that?</p> <p>2 <b>A. If someone has the intent to commit fraud, then</b></p> <p>3 <b>-- then one has to worry whether registration is</b></p> <p>4 <b>fraudulent and one has to be concerned about mail-in as</b></p> <p>5 <b>well as in-person fraud. This particular bill, I</b></p> <p>6 <b>believe, only addresses in-person fraud.</b></p> <p>7 Q. We'll get back to some of those other purposes</p> <p>8 a little bit later.</p> <p>9 Was House Bill 218 once it was passed by</p> <p>10 the House referred to the Senate?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. Did you refer that bill to the State Affairs</p> <p>13 Committee?</p> <p>14 <b>A. Yes, two days after it was received.</b></p> <p>15 Q. Did you ordinarily refer bills that amend the</p> <p>16 election code to the State Affairs Committee?</p> <p>17 MS. HALPERN: Objection, asked and</p> <p>18 answered.</p> <p>19 Q. (By Ms. Westfall) You may answer.</p> <p>20 <b>A. I would have to go back, Counsel, and look at</b></p> <p>21 <b>what I did in 2005, but absent having my memory</b></p> <p>22 <b>refreshed about the 2005 session and looking at this for</b></p> <p>23 <b>the first time, this was the first Voter ID bill, absent</b></p> <p>24 <b>a review of 2005, that I had referred anywhere, and I</b></p> <p>25 <b>referred it to the State Affairs.</b></p>	<p style="text-align: right;">43</p> <p>1 <b>as a matter of course that we met with him.</b></p> <p>2 Q. When you --</p> <p>3 <b>A. That I know as a matter of course that we would</b></p> <p>4 <b>want to meet with him.</b></p> <p>5 Q. Thank you. When you meet with senators to</p> <p>6 discuss their interest in sponsoring a House bill, what</p> <p>7 topics do you generally cover in those meetings?</p> <p>8 MS. HALPERN: And let me caution the</p> <p>9 witness. She's asking you topics, not specific</p> <p>10 conversations. Because if she asked you specific</p> <p>11 conversations, that would invade the legislative</p> <p>12 privilege. So you can answer the question she's asked,</p> <p>13 just in answering it, don't refer to specific</p> <p>14 conversations with specific senators.</p> <p>15 <b>A. If I can be a little broader than that and say</b></p> <p>16 <b>that -- that on specific legislation, whether I'm -- in</b></p> <p>17 <b>the past reached out to talk to a Senator about carrying</b></p> <p>18 <b>a bill or the Senator came to me and wanted to talk</b></p> <p>19 <b>about carrying a bill, we would inevitably have a</b></p> <p>20 <b>conversation on what their goal was with the bill, what</b></p> <p>21 <b>they wanted to accomplish and how they proposed to move</b></p> <p>22 <b>the bill through the Senate.</b></p> <p>23 Q. (By Ms. Westfall) Would you also provide your</p> <p>24 input as to how to accomplish moving the bill through</p> <p>25 the Senate?</p>
<p style="text-align: right;">42</p> <p>1 Q. Ordinarily for other bills not related to Voter</p> <p>2 ID that amended the state election code, would you</p> <p>3 ordinarily refer them to the State Affairs Committee?</p> <p>4 <b>A. Yes.</b></p> <p>5 MR. BRISSENDEN: Objection, form.</p> <p>6 Q. (By Ms. Westfall) Did any Senator indicate</p> <p>7 interest in sponsoring House Bill 18?</p> <p>8 MS. HALPERN: I'm going to object on the</p> <p>9 grounds of legislative privilege.</p> <p>10 Q. (By Ms. Westfall) You may answer.</p> <p>11 MS. HALPERN: And I would ask you to</p> <p>12 answer the question "yes" or "no" without divulging the</p> <p>13 name of anybody, and then we'll take it from there.</p> <p>14 THE WITNESS: Is there a third choice?</p> <p>15 MS. HALPERN: No.</p> <p>16 <b>A. I don't remember.</b></p> <p>17 Q. (By Ms. Westfall) Did Senator Fraser indicate</p> <p>18 interest in sponsoring House Bill 218?</p> <p>19 <b>A. I don't remember.</b></p> <p>20 Q. Did your office meet with Senator Fraser or his</p> <p>21 staff concerning his sponsorship of House Bill 18?</p> <p>22 MS. HALPERN: 218.</p> <p>23 Q. (By Ms. Westfall) 218.</p> <p>24 <b>A. Well, I'm going to answer it this way, Counsel:</b></p> <p>25 <b>If, in fact, Senator Fraser was a sponsor, then I know</b></p>	<p style="text-align: right;">44</p> <p>1 <b>A. To the extent that the proposed bill sponsor</b></p> <p>2 <b>had a view different than -- than that which I thought</b></p> <p>3 <b>was most appropriate to moving the ball -- the bill</b></p> <p>4 <b>forward, then I would share my opinion with them.</b></p> <p>5 Q. Do you recall any meetings between Mr. Hebert</p> <p>6 and Ms. McCoy about Senator Fraser's sponsorship of</p> <p>7 House Bill 218?</p> <p>8 <b>A. None whatsoever.</b></p> <p>9 Q. Do you recall any of your -- of your strategies</p> <p>10 or Senator Fraser's strategies to move House Bill 218</p> <p>11 through the Senate?</p> <p>12 <b>A. No, it was a long time ago.</b></p> <p>13 Q. I understand.</p> <p>14 <b>A. Seven years ago.</b></p> <p>15 Q. Was there a time when Senator Fraser moved to</p> <p>16 suspend the regular order of business to bring House</p> <p>17 Bill 218 to the Floor?</p> <p>18 <b>A. If you'll permit me just for a moment.</b></p> <p>19 Q. Certainly.</p> <p>20 MS. WESTFALL: And let the record reflect</p> <p>21 that the Lieutenant Governor is consulting with Exhibit</p> <p>22 6.</p> <p>23 <b>A. Yes, upon referring to the legislative history</b></p> <p>24 <b>of House Bill 12, I see that a motion to suspend the</b></p> <p>25 <b>regular order of business, which is entitled here,</b></p>

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12 (Pages 45 to 48)

<p style="text-align: right;">45</p> <p>1 <b>"Rules Suspended, Regular Order of Business," occurred</b> 2 <b>on May 15.</b></p> <p>3 Q. (By Ms. Westfall) And so just so the record is 4 clear, you're referring to House Bill 218?</p> <p>5 <b>A. Yes, I am.</b></p> <p>6 Q. Thank you. Had there been -- does Exhibit 6 7 refresh your recollection as to whether there had been 8 any discussions with Senator Fraser's office about the 9 timing of when he was to make this motion to suspend?</p> <p>10 <b>A. Referring to the legislative history, it</b> 11 <b>doesn't -- it doesn't talk in terms of -- of when</b> 12 <b>Senator Fraser was to make a motion to suspend the</b> 13 <b>regular order of business, but now that we're talking</b> 14 <b>about this, I'm remembering some of the details</b> 15 <b>involving that.</b></p> <p>16 Q. Do you recall -- well, strike that. Let me 17 hand you another exhibit.</p> <p>18 MS. WESTFALL: Could you mark this, 19 please?</p> <p>20 (Exhibit 7 marked for identification.)</p> <p>21 Q. (By Ms. Westfall) You've been handed what's 22 been marked as Exhibit 7.</p> <p>23 <b>A. Uh-huh.</b></p> <p>24 Q. Do you recognize this document?</p> <p>25 <b>A. I'm not aware that I've seen it before, but it</b></p>	<p style="text-align: right;">47</p> <p>1 <b>journal and our talking about House Bill 218, according</b> 2 <b>to the exhibit, the bill was brought on a motion to</b> 3 <b>suspend the regular order of business on May 15th, which</b> 4 <b>is traditionally a fairly late date to pass a bill out</b> 5 <b>of the Senate. By that time or one or two days later,</b> 6 <b>the House shuts down as far as considering and passing</b> 7 <b>legislation which has not then been passed. And I</b> 8 <b>remember having one or more conversations with Senator</b> 9 <b>Fraser to try and move the bill if and when there -- we</b> 10 <b>had the votes on the Floor, which is a common</b> 11 <b>legislative practice that if members are marked present</b> 12 <b>and they're not on the Floor, on a roll call vote, one</b> 13 <b>has to have two-thirds of the Senators present and</b> 14 <b>voting.</b></p> <p>15 Q. (By Ms. Westfall) Were you on the Floor that 16 day?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Had you had any discussion with Senator Fraser 19 before he made the motion to suggest that he should make 20 the motion?</p> <p>21 MS. HALPERN: Objection, legislative 22 privilege.</p> <p>23 Q. (By Ms. Westfall) You may answer.</p> <p>24 <b>A. I think I just answered that.</b></p> <p>25 Q. Could you answer it again?</p>
<p style="text-align: right;">46</p> <p>1 <b>represents to be the journal of the Senate for May 15,</b> 2 <b>2007.</b></p> <p>3 Q. And could you take a look at Exhibit 7 at pages 4 2063 of the journal?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Does this refresh your recollection as to the 7 timing of when Senator Fraser moved to suspend the 8 regular order of business and seek to have the Senate 9 hear House Bill 218?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Was there any discussion prior to the motion 12 being made as to -- as to when Senator Fraser would make 13 this motion?</p> <p>14 <b>A. Could you repeat your question?</b></p> <p>15 Q. It was a confusing question. Let me withdraw 16 that question.</p> <p>17 Did you discuss with Senator Fraser's 18 office before May 15, 2007, that it might be a good time 19 to -- for him to make that motion?</p> <p>20 MS. HALPERN: Objection on the grounds of 21 legislative privilege. In accordance with our statement 22 earlier, we're going to permit the witness to answer the 23 question with the understanding that we do object. And 24 this should, therefore, be sealed.</p> <p>25 <b>A. As I recall, as result of your showing me this</b></p>	<p style="text-align: right;">48</p> <p>1 <b>A. I had spoken with Senator Fraser one or more</b> 2 <b>times about -- about the use of the common practice to</b> 3 <b>call for a motion to suspend the regular order of</b> 4 <b>business, in this case, bring up House Bill 218 when he</b> 5 <b>had his votes on the Floor. In other words, two-thirds</b> 6 <b>of the Senators present and voting would vote for the</b> 7 <b>bill.</b></p> <p>8 Q. Did that arise on May 15, 2007, because Senator 9 Uresti and Whitmire were not on the Floor?</p> <p>10 <b>A. Yes, and Senator Hegar.</b></p> <p>11 Q. So did -- what was the outcome of the motion to 12 suspend the regular order of business, with the first --</p> <p>13 <b>A. It passed.</b></p> <p>14 Q. It passed. Then was -- was there a request to 15 verify the vote?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Who was that made by?</p> <p>18 <b>A. According to Exhibit 7, Senator Eliot</b> 19 <b>Shapleigh.</b></p> <p>20 Q. Had you opposed -- had you anticipated the bill 21 opponents of House Bill 218 would oppose any efforts to 22 -- actually, strike that.</p> <p>23 Did you permit the vote to occur, 24 verification of the vote to occur?</p> <p>25 <b>A. Yes.</b></p>

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13 (Pages 49 to 52)

<p style="text-align: right;">49</p> <p>1 Q. Why did you do that?</p> <p>2 MS. HALPERN: Objection, legislative</p> <p>3 privilege. Under seal.</p> <p>4 A. Senator Whitmire claimed, contrary to -- to --</p> <p>5 to what had happened, that he was on the Floor, which</p> <p>6 was impossible since I called on him numerous times and</p> <p>7 could not visually see him anywhere on the Floor. But</p> <p>8 knowing that this is an important bill to the Democrats</p> <p>9 and to the Republicans, I didn't want controversy. And</p> <p>10 but for Senator Whitmire making the allegation that he</p> <p>11 was on the Floor, I bent over backwards to respect him</p> <p>12 and his statement, and I permitted for the -- the roll</p> <p>13 call vote to be made a second time.</p> <p>14 Q. (By Ms. Westfall) And what happened with the</p> <p>15 verification of the vote? What was the outcome?</p> <p>16 A. The -- instead of being a 19 to 9 vote where</p> <p>17 two-thirds of those voting had voted for the bill, the</p> <p>18 vote was 20 to 11, which meant that there -- it failed</p> <p>19 by one vote.</p> <p>20 Q. Did you anticipate the bill supporters would</p> <p>21 oppose your decision to permit a verification of the</p> <p>22 vote to occur?</p> <p>23 MS. HALPERN: Objection, legislative</p> <p>24 privilege.</p> <p>25 A. Could you say that again?</p>	<p style="text-align: right;">51</p> <p>1 integrity of the Senate and the Senators, that Senator</p> <p>2 Whitmire had claimed, contrary to what I believed, that</p> <p>3 he was on the Floor, and -- and as the Dean of the</p> <p>4 Senate, I gave that some import and allowed a</p> <p>5 verification vote to be made.</p> <p>6 Q. I believe you testified earlier that --</p> <p>7 A. I testified -- oh, I'm sorry.</p> <p>8 Q. That you just testified -- you just testified</p> <p>9 that it was fairly common that bill supporters would</p> <p>10 wait for their supporters to be present on the Floor</p> <p>11 such that they had two-thirds and then they would seek</p> <p>12 to move to suspend. Do you recall when that happened</p> <p>13 before, a specific instance?</p> <p>14 A. The only thing I can remember on a number of</p> <p>15 different bills that that occurred. It's a fairly</p> <p>16 common legislative practice. You try and move your bill</p> <p>17 when you have the votes on the floor.</p> <p>18 Q. How often does that happen in the session?</p> <p>19 A. Monthly.</p> <p>20 Q. But it happens every session to your knowledge?</p> <p>21 A. Yes.</p> <p>22 Q. Did the Senate after the verification of the</p> <p>23 vote take any further action on House Bill 218?</p> <p>24 A. No.</p> <p>25 Q. Why not?</p>
<p style="text-align: right;">50</p> <p>1 Q. (By Ms. Westfall) Did you anticipate that the</p> <p>2 Senators who supported the bill would not be pleased</p> <p>3 with your decision to permit the verification of the</p> <p>4 vote to occur?</p> <p>5 MS. HALPERN: Objection, vague.</p> <p>6 Objection, assumes facts not in evidence. Objection, no</p> <p>7 predicate.</p> <p>8 Q. (By Ms. Westfall) You may answer.</p> <p>9 MS. HALPERN: If you can.</p> <p>10 A. I knew that some of the -- of the Senators who</p> <p>11 were in favor of House Bill 218 would be unhappy that I</p> <p>12 allowed a verification vote.</p> <p>13 Q. (By Ms. Westfall) Did you have any concerns</p> <p>14 about -- about legal challenges to House Bill 218 if the</p> <p>15 motion to suspend was permitted to stand, the initial</p> <p>16 vote?</p> <p>17 A. No.</p> <p>18 Q. Did you have any other concerns that caused you</p> <p>19 to permit the verification of the vote to occur other</p> <p>20 than what you just testified to?</p> <p>21 A. Again, I don't --</p> <p>22 MS. HALPERN: Objection, legislative</p> <p>23 privilege.</p> <p>24 Q. (By Ms. Westfall) You may answer.</p> <p>25 A. My concern was in -- in respecting the</p>	<p style="text-align: right;">52</p> <p>1 A. Because time was running out and -- and we</p> <p>2 didn't see another opportunity where the votes -- where</p> <p>3 we would have the votes on the Floor to pass it.</p> <p>4 Q. Did you have any conversations or your staff</p> <p>5 have any conversations with Senator Fraser's office</p> <p>6 about House Bill 18 after it failed in the Senate?</p> <p>7 MS. HALPERN: Objection, legislative</p> <p>8 privilege.</p> <p>9 A. I don't remember.</p> <p>10 Q. (By Ms. Westfall) Did you discuss after the</p> <p>11 failure of House Bill 218 in the House -- I mean in the</p> <p>12 Senate, strategies for advancing Voter ID in the</p> <p>13 following session?</p> <p>14 MS. HALPERN: Objection, legislative</p> <p>15 privilege.</p> <p>16 A. I -- I very well may have, which would have</p> <p>17 been typical of me to, as a problem solver, but I don't</p> <p>18 remember any specific conversation.</p> <p>19 Q. (By Ms. Westfall) Changing topics a little</p> <p>20 bit. Could you tell me what the Texas Election</p> <p>21 Administration Management system is, otherwise known as</p> <p>22 TEAM?</p> <p>23 A. You may have to refresh my memory.</p> <p>24 Q. Is it the voter registration database of the</p> <p>25 state?</p>



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<p style="text-align: right;">53</p> <p>1 <b>A. Yes, thank you so much.</b></p> <p>2 Q. Was it created in response to the federal Help</p> <p>3 America Vote Act?</p> <p>4 <b>A. If you represent that, I'll agree with you.</b></p> <p>5 MS. HALPERN: Don't do that.</p> <p>6 <b>A. Sorry.</b></p> <p>7 MS. HALPERN: She's not on your side.</p> <p>8 <b>A. I understand that. But I don't -- I don't know</b></p> <p>9 <b>what was the -- I don't -- I don't remember what -- what</b></p> <p>10 <b>was the precursor to it being formed.</b></p> <p>11 Q. (By Ms. Westfall) Okay, that's fine. Did you</p> <p>12 serve on a legislative audit committee that reviewed</p> <p>13 TEAM in 2007?</p> <p>14 <b>A. I don't remember. But if you will refresh my</b></p> <p>15 <b>memory.</b></p> <p>16 Q. And I will do so.</p> <p>17 MS. WESTFALL: Could you mark this?</p> <p>18 (Exhibit 8 marked for identification.)</p> <p>19 Q. (By Ms. Westfall) Sir, you've been handed</p> <p>20 what's been marked as Exhibit 8.</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. And you don't need to review this entire</p> <p>23 document, just the cover page and the second to last</p> <p>24 page, which indicates members of the Legislative Audit</p> <p>25 Committee. When you're done looking at those two pages,</p>	<p style="text-align: right;">55</p> <p>1 <b>copy, but.</b></p> <p>2 Q. And I will represent to you that it is taken</p> <p>3 from the Texas Legislative website, and it is Senate</p> <p>4 Bill 362 as introduced in the Senate.</p> <p>5 <b>A. As introduced.</b></p> <p>6 Q. As introduced, yes.</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. And do you recognize Exhibit 10?</p> <p>9 <b>A. I've not seen Exhibit 10 before but it appears</b></p> <p>10 <b>to be the Texas legislative history on Senate Bill 362.</b></p> <p>11 <b>Q. Very good. And following the failure of House</b></p> <p>12 <b>Bill 218 in the Senate, did you believe the Senate</b></p> <p>13 <b>should pass the Voter ID bill in the following session?</b></p> <p>14 MR. HALPERN: Objection, legislative</p> <p>15 privilege.</p> <p>16 <b>A. I -- I continued to believe, based upon my</b></p> <p>17 <b>traveling around the State of Texas and talking with</b></p> <p>18 <b>hundreds and hundreds and hundreds of people and looking</b></p> <p>19 <b>at third-party polling, whether it's Rasmussen, whether</b></p> <p>20 <b>it was the University of Texas polling, that -- that a</b></p> <p>21 <b>super majority of Texans, both Hispanic, African-</b></p> <p>22 <b>American and Anglo were in favor of a Voter ID.</b></p> <p>23 <b>Q. (By Ms. Westfall) Was there any other set of</b></p> <p>24 <b>circumstances or facts that caused you to conclude in</b></p> <p>25 <b>2008 that it was a good idea to press forward with Voter</b></p>
<p style="text-align: right;">54</p> <p>1 could you let me know?</p> <p>2 <b>A. I'm through.</b></p> <p>3 Q. And do you see that the last page indicates</p> <p>4 that you were on the Legislative Audit Committee?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Do you remember anything about this audit</p> <p>7 sitting here today without looking at Exhibit 8?</p> <p>8 <b>A. No, but I'd be glad to read the document.</b></p> <p>9 Q. I think at this time you don't need to -- to</p> <p>10 look at Exhibit 8. We may talk about that a little bit</p> <p>11 later.</p> <p>12 MS. HALPERN: How long have we been going,</p> <p>13 Mr. Reporter?</p> <p>14 THE REPORTER: About an hour.</p> <p>15 MS. WESTFALL: Let's take a break.</p> <p>16 (Recess taken from 10:20 to 10:36 a.m.)</p> <p>17 (Exhibits 9 and 10 marked for</p> <p>18 identification.)</p> <p>19 Q. (By Ms. Westfall) Sir, you've been handed</p> <p>20 what's been marked Exhibits 9 and 10. Do you recognize</p> <p>21 Exhibit 9?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. What is it?</p> <p>24 <b>A. It is a copy of Senate Bill 362. I'm not</b></p> <p>25 <b>advised as to whether it's a filed copy or an engrossed</b></p>	<p style="text-align: right;">56</p> <p>1 <b>ID in 2009?</b></p> <p>2 MR. BRISSENDEN: Objection, form.</p> <p>3 Q. (By Ms. Westfall) You may answer.</p> <p>4 <b>A. Well, beginning in 2005, when we first looked</b></p> <p>5 <b>at passing Voter ID, the reason I did that was because I</b></p> <p>6 <b>had been concerned for many, many years about low voter</b></p> <p>7 <b>turnout in Texas, and I have heard consistently over the</b></p> <p>8 <b>last 10 to 12 years that -- that many Texans either</b></p> <p>9 <b>hesitate to vote or don't vote because they don't think</b></p> <p>10 <b>their vote will count because they're concerned about</b></p> <p>11 <b>voter fraud.</b></p> <p>12 Q. Were there any organizations that contacted you</p> <p>13 in 2008 to ask that you support Voter ID in 2009?</p> <p>14 <b>A. None that come to mind.</b></p> <p>15 <b>Q. Were there any other facts, other than the ones</b></p> <p>16 <b>you just described, that would support moving forward</b></p> <p>17 <b>with Voter ID in 2009?</b></p> <p>18 <b>A. Well, Texas has had a history of voter fraud</b></p> <p>19 <b>since 1948 in the allegations of the stuffing the ballot</b></p> <p>20 <b>box when former President Lyndon Johnson was elected.</b></p> <p>21 <b>And that's continued: People are always -- have always</b></p> <p>22 <b>been talking to me about voter fraud and in-person fraud</b></p> <p>23 <b>as I travel to different jurisdictions around the state.</b></p> <p>24 <b>It was probably one of the primary issues that were on</b></p> <p>25 <b>the minds of Texas voters, particularly Texas</b></p>

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<p style="text-align: right;">57</p> <p>1 conservatives, of which simply referring to third-party 2 polling, a super majority of Texans fit into that 3 category. 4 Q. Did you have any desire to enact a Voter ID -- 5 voter fraud legislation concerning other types of voter 6 fraud besides voter impersonations in 2009? 7 A. Yes. 8 Q. What other types of fraud did you seek to 9 address? 10 A. Well, that's not what you asked me. You asked 11 me a different question. You asked me did I have other 12 -- 13 Q. Did you have -- 14 A. Did I want, did I want. 15 Q. Yes. 16 A. And the answer to your first question was, yes, 17 I wanted to. I wanted to address all three of the 18 forms, and there may be a fourth that -- in which voter 19 fraud was involved, both in-person fraud, mail-in fraud 20 and registration fraud. I don't remember which session, 21 maybe the 2009 or 2011, we attempted to address the 22 registration component in that session's Voter ID bill, 23 but on advice of counsel, I believe Mr. Hebert, because 24 of a concern of a two-subject rule, we took the 25 registration out. But no, I've been very concerned</p>	<p style="text-align: right;">59</p> <p>1 sponsoring Voter ID bill? 2 MR. HALPERN: Objection, legislative 3 privilege. Just answer yes or no. 4 A. Yes. 5 Q. (By Ms. Westfall) More than one other person? 6 A. Could you rephrase your question? 7 Q. Certainly. More than one other Senator? 8 A. Other than Senator Fraser? 9 Q. Yes. 10 A. Yes. 11 Q. How many Senators all together? 12 A. If memory serves, one or more. I'm trying to 13 remember which ones. But I know I had conversations 14 about this. 15 Q. Did Senator Fraser file a Voter ID bill in 16 2008? 17 A. Let me look at Exhibit 10. Yes. 18 Q. Was it Senate Bill 362? 19 A. Yes. 20 Q. Who was involved in developing the substance of 21 Senate Bill 362? 22 MR. HALPERN: Objection, legislative 23 privilege. 24 A. Principally, Senator Fraser's office with 25 general coordination with the appropriate parties in my</p>
<p style="text-align: right;">58</p> <p>1 about addressing voter fraud across the board: 2 In-person, mail-in, and registration. 3 Q. And to be clear, Senate Bill 362 addressed 4 in-person voter fraud; is that correct? 5 A. Let me look at it again. 6 Q. Certainly. 7 A. On a quick look at Senate Bill 362, I don't see 8 the registration part that I had in mind. That may have 9 been contained in the 2011 Senate Bill 14 draft as 10 filed. 11 Q. So Senate Bill 362 addressed in-person voter 12 impersonation solely; is that correct? 13 A. That is my understanding of the bill. 14 Q. And you had an interest in addressing, through 15 other legislation, voter fraud related to registration 16 and mail-in ballots; is that correct? 17 A. Yes. 18 Q. Did any Senator approach you to express 19 interest in filing a Voter ID bill? 20 MR. HALPERN: Objection, legislative 21 privilege. 22 A. Yes. 23 Q. (By Ms. Westfall) Who was that Senator? 24 A. Senator Fraser. 25 Q. Did any other Senator approach you about</p>	<p style="text-align: right;">60</p> <p>1 office. 2 Q. (By Ms. Westfall) Would that be Mr. Hebert? 3 A. I believe so. 4 Q. Was anyone else from your office involved? 5 A. Again, going back to my earlier testimony, on 6 our passing 1,500 or so of the 6,000 bills as filed each 7 legislative session, from time to time I was intimately 8 involved in our schedule, when are we going to bring the 9 bill up, as well as my then Chief of Staff, Bryan -- 10 excuse me, Blaine Brunson and my Deputy Chief of Staff 11 and Policy Director, Julia Rathgeber. 12 Q. How would you characterize the extent of your 13 office's involvement in developing Senate Bill 362? 14 A. Going back to my earlier testimony, 15 conversations with the bill sponsor and his staff as to 16 what they intended with the bill and -- and their 17 proposed timing, and where I disagreed, I would share my 18 thoughts with them. 19 Q. Were you involved in the substance of the bill 20 at all or just the procedure and timing of how to move 21 it? 22 A. Both. 23 Q. Was there a particular aspect of Senate Bill 24 362 that you were involved in? 25 A. It was my desire to model a Voter ID bill as</p>

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16 (Pages 61 to 64)

<p style="text-align: right;">61</p> <p>1 close as we could after what had passed in Indiana and 2 been approved by the U.S. Supreme Court, and I don't 3 remember when Georgia received their preclearance, but 4 -- but at a later date, the Georgia bill. 5 Q. So you were following the Indiana photo ID 6 bill, the Georgia ID bill. Were there any other models 7 that you were following in developing Senate Bill 362? 8 A. In all my conversations with Senator Fraser, in 9 all my conversations with Democrat Senators and 10 Republican Senators, I stressed that I wanted the bill 11 to be constitutional, meet all of the guidelines and 12 that those two bills -- and now I may be getting ahead 13 of myself several months because I don't remember when 14 the Georgia bill was precleared, but I think that the 15 Indiana bill was approved by the Supreme Court in 2008, 16 which would have preceded this by at least six months -- 17 that these were good examples of bills that we could 18 model our legislation after to make sure that we met all 19 of the constitutional requirements and protected all of 20 our citizens, because again, my goal was increasing 21 turnout by everyone. 22 Q. Before Senator Fraser filed Senate Bill 362, 23 did you discuss with him or any other Senator what types 24 of IDs to include in the bill? 25 A. Yes.</p>	<p style="text-align: right;">63</p> <p>1 A. Yes. 2 Q. Did you have any discussions with Senator 3 Fraser about including non-photo ID in Senate Bill 362? 4 A. Yes. 5 Q. What was your opinion as to whether non-photo 6 ID should be included in the bill? 7 MR. HALPERN: Objection, legislative 8 privilege. 9 A. You're misrepresenting my answer "yes". 10 Q. (By Ms. Westfall) You did -- did you have a 11 conversation with Senator Fraser? 12 A. Yes. 13 Q. And you expressed an opinion about whether 14 non-photo ID should be included? 15 A. Yes. 16 Q. What was that opinion? 17 A. That it was a start. I did not -- I had 18 concerns that -- where was I -- where was I just looking 19 -- official mail addressed to a person may -- may not 20 prove that person is who they are. Did I see an 21 electric bill in here somewhere? No, I didn't see an 22 electric bill. (Witness reading.) 23 Q. What was your concerns about the non-photo ID 24 in particular? 25 A. Yes.</p>
<p style="text-align: right;">62</p> <p>1 Q. Who did you have discussions with? 2 A. Senator Fraser. 3 Q. And what -- what was your opinion about what 4 should be included in the bill? 5 A. I thought the bill should focus, pursuant to 6 the Indiana bill that was approved by the U.S. Supreme 7 Court, on photo ID in order to increase confidence by 8 the voting public in the integrity of our election 9 system, and therefore, increase voter turnout among 10 Texans. 11 Q. As you sit here today, do you know whether 12 Senate Bill 362 permitted only the use of photo ID or 13 did it allow the use of non-photo ID? 14 A. If you will permit me a moment -- 15 Q. Yes. And, sir, I would direct your attention 16 to Page 5, of Exhibit 9, and 6. 17 THE REPORTER: Excuse me, I need to go off 18 the record a minute. My sound stopped recording. 19 (Recess from 10:54 to 10:55 a.m.) 20 Q. (By Ms. Westfall) Sir, now that you've had a 21 chance to look at Exhibit 9, at the list of ID, does 22 this refresh your recollection as to whether Senate Bill 23 362 allowed for the use of non-photo ID? 24 A. Yes. 25 Q. And does it?</p>	<p style="text-align: right;">64</p> <p>1 Q. Did you have concerns about non-photo ID? 2 A. Yes. 3 Q. What were those concerns? 4 A. That they would not -- that they were a start. 5 They were a start in the process to reduce fraud, but I 6 could not evaluate whether or not they alone would 7 permit the integrity of the election process to be 8 protected, how much fraud they would reduce of in-person 9 and/or other frauds, mail-in and registration. And I 10 expressed that to -- to Senator Fraser. 11 Q. Were you aware of any particular instances in 12 which non-photo ID had been used in the past 13 fraudulently by voters in Texas? 14 MR. BRISSENDEN: Objection, form. 15 A. Are you asking me about a specific timeline or 16 anytime prior to and including the regular session 2009? 17 Q. (By Ms. Westfall) The latter. Anytime prior to 18 2009, were you aware -- 19 A. Prior to 2009 or including 2009? 20 Q. Including 2009. Were you aware -- 21 A. Yes. 22 Q. And what -- when did that occur? 23 A. During -- during my conversations to voters 24 around the state for the -- for the four years prior to 25 2009, I was frequently told of -- by people, including</p>

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<p style="text-align: right;">65</p> <p>1 election officials, of in-person fraud that had been 2 committed. During the 2009 session, during the 24 -- 3 was it 24 hours -- was it the 2009 -- 24 was in 2011? 4 No, it was in 2009. 5 During the 2009 session, in which we had a 6 26- or 27-hour non-stop session, it was replete with 7 examples of in-person fraud. 8 Q. Outside of what you heard from voters and 9 Texans through traveling the state, and the hearing in 10 2009, are you aware of any other instances of persons 11 using non-photo ID to commitment in-person voter 12 impersonations? 13 A. Yes. 14 Q. Could you tell me about those instances? 15 A. Well, I'll just share one with you and that is 16 that Senator Tommy Williams told me that his -- and I 17 may be getting this wrong, it was either his father or 18 his brother had died in the mid-1990s and it wasn't 19 until -- until the late 2000s that he discovered that 20 his deceased father or brother had voted almost every 21 election, and not surprising, in the Democrat Primary. 22 Q. Are you aware of any other instances, other 23 than the ones you just testified to, concerning voters 24 using non-photo ID to impersonate other voters at the 25 polls?</p>	<p style="text-align: right;">67</p> <p>1 permissible form of ID; is that correct? 2 A. Yes. Because I felt like it was a start, a 3 start on the goal of reducing fraud. 4 Q. Turning your attention back to Exhibit 10 -- 9, 5 pardon me, and the forms of ID listed at Page 5. Do you 6 know how this list of acceptable IDs in Senate Bill 362 7 was developed? 8 MR. HALPERN: Objection, vague. Are you 9 asking him who developed the list? 10 MS. WESTFALL: That -- could you read back 11 the question. 12 (Requested portion was read back by the 13 court reporter.) 14 A. Yes. 15 Q. (By Ms. Westfall) How was it developed? 16 A. By Senator Fraser and a collaborative effort 17 with -- with other offices and I believe Bryan Hebert. 18 Q. Which other offices, if you know? 19 A. I don't -- I don't specifically recall, but I 20 remember that Senator Fraser consulted other Senators. 21 Q. Did he consult with Senator Duncan's staff? 22 A. I believe he did. 23 Q. Did he consult with Senator Williams' staff? 24 A. I believe he did. 25 Q. Do you know -- are you aware of the criteria</p>
<p style="text-align: right;">66</p> <p>1 A. Counsel, I just shared with you that I had had 2 hundreds of conversations over the previous four years 3 with people around the state of Texas, not only regular 4 citizens who were standing in line and told me 5 anecdotally about someone they felt was impersonating a 6 different person, as well as poll watchers, election 7 judges telling me the same thing. So it wasn't just one 8 person, it was many people. 9 Q. Thank you. I just wanted to make sure I 10 understood all -- all of your testimony on that topic. 11 A. All right. 12 Q. Did you have any discussions with Senator 13 Fraser about the treatment of provisional ballots in 14 Senate Bill 362? 15 MR. HALPERN: Objection, legislative 16 privilege. 17 A. I don't remember. 18 Q. (By Ms. Westfall) Did you support Senate Bill 19 362? 20 A. I did. 21 Q. And you voted for it in the Committee of the 22 Whole; is that correct? 23 A. Yes. 24 Q. And you supported Senate Bill 362 25 notwithstanding that it included non-photo ID as a</p>	<p style="text-align: right;">68</p> <p>1 that Senator Fraser used to determine whether to include 2 a particular form of ID in Senate Bill 362? 3 MR. BRISSENDEN: Objection, form. 4 MS. HALPERN: Counsel -- vague. Are you 5 asking only about the photo or are you asking about the 6 electric bills too? 7 MS. WESTFALL: No. I'm asking about the 8 forms of ID. 9 MR. HALPERN: So. You said no. You mean 10 all forms -- 11 MS. WESTFALL: All. All. 12 MS. HALPERN: The electric bills and any? 13 MS. WESTFALL: Any. Right. 14 Q. (By Ms Westfall) Do you know the criteria for 15 including any forms of ID -- 16 A. I don't -- 17 Q. -- in Senate Bill 362? 18 A. I don't recall what Senator Fraser said 19 concerning his criteria. 20 Q. Do you know whether Senate Bill 362 was modeled 21 after House Bill 218? 22 A. My memory is that it was. 23 Q. Did you or Bryan Hebert advise Senator Fraser 24 to make changes -- any changes to Texas House Bill 218 25 before filing the bill?</p>

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<p style="text-align: right;">69</p> <p>1 MR. HALPERN: Objection, legislative 2 privilege. 3 <b>A. Counsel, I shared with you a few moments ago in 4 my testimony my conversation with Senator Fraser on -- 5 on my desire to maximize our attempts to defeat voter 6 fraud in all forms and to provide the maximum confidence 7 by voters in Texas in our election process so we would 8 increase voting across the board.</b> 9 Q. (By Ms. Westfall) So that was your desire -- 10 <b>A. Yes.</b> 11 Q. -- in terms of the bill? 12 Turning back to my question, are you aware 13 of any consideration that Senator Fraser gave to making 14 changes to House Bill 218 -- 15 MR. HALPERN: Objection -- 16 Q. (By Ms. Westfall) -- before he filed Senate 17 Bill 362, or are you not aware? 18 MR. HALPERN: Objection, calls for 19 speculation. 20 Q. (By Ms. Westfall) You may answer. 21 <b>A. It is my memory that Senator Fraser wanted to 22 base Senate Bill 362 on the previous sessions' House 23 Bill 218, which had -- because it had passed the House, 24 and therefore, was a good starting point.</b> 25 Q. Do you recall any particular IDs that he wanted</p>	<p style="text-align: right;">71</p> <p>1 <b>A. That's my understanding.</b> 2 Q. Why did -- why did Senate Bill 362, therefore, 3 not follow the Indiana model and it did include 4 non-photo ID? 5 MS. HALPERN: Objection, asked and 6 answered. 7 Q. (By Ms. Westfall) You may answer. 8 <b>A. Senator Fraser recommended that we file a bill 9 in Senate Bill 362 that was based upon House Bill 218, 10 which had passed the House. And even though it had 11 non-photo ID, he felt -- and I could understand his 12 position -- it was a good starting point.</b> 13 Q. Are you familiar, under Senate Bill 362, what 14 the procedure is if a voter appeared at the polls 15 without any of the photo necessary, what kind of a 16 ballot that would cast? 17 <b>A. I believe the voter would -- could vote a 18 provisional ballot.</b> 19 Q. And did -- do you recall whether Senate Bill 20 362 allowed provisional voter -- provisional ballots 21 cast by voters without necessary ID to be counted 22 without further action on the part of the voter? 23 MR. HALPERN: Is there a section of the 24 bill you want to direct him to, Counsel? 25 MS. WESTFALL: I'm asking based on his</p>
<p style="text-align: right;">70</p> <p>1 to remove from House Bill 218? 2 <b>A. No.</b> 3 Q. You alluded earlier to the Supreme Court 4 decision Crawford related to the Indiana Voter ID law; 5 is that correct? 6 <b>A. Yes.</b> 7 Q. And it was issued in April 2008; is that right? 8 <b>A. I don't know when it was issued but I remember 9 it was issued in 2008.</b> 10 Q. Therefore, Senate Bill 362 was filed after the 11 Crawford decision; is that correct? 12 <b>A. Yes.</b> 13 <b>Q. Did the Crawford decision have any impact on 14 the development of Voter ID legislation in Texas?</b> 15 <b>A. Yes.</b> 16 <b>Q. How did it impact the development of 17 legislation in Texas?</b> 18 <b>A. Over time, certainly by 2011 in Senate Bill 14, 19 I felt that it was important, and Senator Fraser agreed, 20 that we focus on a model that had been approved by the 21 U.S. Supreme Court and, in the case of Georgia, had 22 reached preclearance.</b> 23 <b>Q. The Indiana law at issue in Crawford only 24 permitted the use of photo ID, correct, and not 25 non-photo ID?</b></p>	<p style="text-align: right;">72</p> <p>1 memory, Counsel. 2 <b>A. Well, Counsel, I'm looking to see where this is 3 addressed to refresh my memory.</b> 4 Q. (By Ms. Westfall) Let the record reflect that 5 the witness is looking at Exhibit 9. 6 Let me withdraw that question and ask you 7 another question. 8 Sir, before Senate Bill 14 was enacted, do 9 you know what the procedure was when a voter appeared 10 without necessary registration card or other non-photo 11 ID that was previously required, how that voter would 12 vote? 13 <b>A. I believe that the procedure was that an 14 affidavit be signed and the voter voted a provisional 15 ballot. And I'm unclear whether or not that would be 16 counted or not and the methodology on how it would be 17 counted.</b> 18 Q. Is it your recollection that the ballot board 19 would subsequently determine whether that voter was 20 eligible and registered, and determine whether to count 21 that ballot? 22 <b>A. I believe that's correct.</b> 23 Q. And is it your recollection that the voter 24 would not have to go to the election board to provide 25 further proof in order to ensure that that provisional</p>



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<p style="text-align: right;">73</p> <p>1 ballot would be counted?</p> <p>2 <b>A. Prior to the passage of Senate Bill 14, I</b></p> <p>3 <b>believe that's correct.</b></p> <p>4 Q. And do you recall whether Senate Bill 362, in</p> <p>5 essence, retained current law with regard to provisional</p> <p>6 ballots, and that's why there isn't much in the way of</p> <p>7 changes in Senate Bill 362 to the provisional ballot</p> <p>8 procedure?</p> <p>9 MR. BRISSENDEN: Objection, form.</p> <p>10 Q. (By Ms. Westfall) You may answer.</p> <p>11 <b>A. I am looking at Exhibit 9 and I do not see a</b></p> <p>12 <b>provision in Exhibit 9 that changed the way that</b></p> <p>13 <b>provisional ballots were handled.</b></p> <p>14 Q. Is it your recollection that Senate Bill 362</p> <p>15 essentially maintained the status quo for provisional</p> <p>16 balloting?</p> <p>17 <b>A. Since Exhibit 9 did not address changes to the</b></p> <p>18 <b>treatment of provisional ballots, then I can only deduce</b></p> <p>19 <b>that the handling, in state law, in state election code,</b></p> <p>20 <b>provisional ballots has not changed -- did not change.</b></p> <p>21 Q. Do you recall whether the Indiana photo ID law</p> <p>22 required voters who cast a provisional ballot due to</p> <p>23 lack of ID, to return to the election office with photo</p> <p>24 ID to ensure that ballot would be counted?</p> <p>25 <b>A. It is my recollection that it did.</b></p>	<p style="text-align: right;">75</p> <p>1 Q. (By Ms. Westfall) You may answer.</p> <p>2 <b>A. During what time period?</b></p> <p>3 Q. 2009, 2008.</p> <p>4 <b>A. No. But it would have been virtually</b></p> <p>5 <b>impossible to do that. We didn't -- we weren't</b></p> <p>6 <b>established where we could -- where we could pull up</b></p> <p>7 <b>data.</b></p> <p>8 Q. Are you familiar with Section 5 the Voting</p> <p>9 Rights Act? And just a general familiarity, not a</p> <p>10 legal, technical familiarity.</p> <p>11 <b>A. I have a general familiarity with Section 5.</b></p> <p>12 Q. What is your understanding of what Texas used</p> <p>13 to have to undergo under Section 5 of the Voting Rights</p> <p>14 Act?</p> <p>15 <b>A. It had to go through preclearance with either</b></p> <p>16 <b>the Department of Justice or the Courts in Washington,</b></p> <p>17 <b>D.C.</b></p> <p>18 Q. And what -- that was before the State could</p> <p>19 enforce any changes to the election code; is that right?</p> <p>20 <b>A. Yes.</b></p> <p>21 <b>Q. Did you want to -- when you -- when Senate Bill</b></p> <p>22 <b>362 had been filed, did you want to ensure that Texas</b></p> <p>23 <b>could enforce Senate Bill 362 had it been enacted?</b></p> <p>24 <b>A. My intent from day one in 2005 through today is</b></p> <p>25 <b>make sure that any election legislation is</b></p>
<p style="text-align: right;">74</p> <p>1 Q. Do you know why Senate Bill 362 did not follow</p> <p>2 that procedure under Indiana law?</p> <p>3 <b>A. I do not know.</b></p> <p>4 Q. Is it fair to say that the provisional ballot</p> <p>5 procedure under Senate Bill 362 was more lenient than</p> <p>6 the Indiana provisional ballot procedure?</p> <p>7 MR. BRISSENDEN: Objection, form.</p> <p>8 Q. (By Ms. Westfall) You may answer.</p> <p>9 MS. HALPERN: Objection, vague.</p> <p>10 Q. (By Ms. Westfall) You may answer.</p> <p>11 <b>A. It depends upon your definition of lenient, but</b></p> <p>12 <b>to the extent that it contained non-photo ID, it was</b></p> <p>13 <b>more vulnerable to fraud.</b></p> <p>14 Q. And actually I was asking with regard to the</p> <p>15 provisional ballot procedure?</p> <p>16 <b>A. Oh, I'm sorry.</b></p> <p>17 Q. That's okay. Was it more -- was Senate Bill</p> <p>18 362 more lenient to voters than the Indiana law was?</p> <p>19 <b>A. Vis-a-vis the provisional ballot?</b></p> <p>20 Q. The provisional ballot.</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Were you aware of any analysis that was</p> <p>23 conducted concerning the likely impact of Senate Bill</p> <p>24 362 on voters?</p> <p>25 MR. HALPERN: Objection, vague.</p>	<p style="text-align: right;">76</p> <p>1 <b>constitutional, protects all parties and increases the</b></p> <p>2 <b>amount of turnout.</b></p> <p>3 Q. And you wanted to be able to enforce Senate</p> <p>4 Bill 362 by getting it precleared under Section 5 of the</p> <p>5 Voting Rights Act; is that right?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Did you -- and what did Texas have to do to</p> <p>8 show that it was entitled to preclearance?</p> <p>9 MR. HALPERN: Objection, calls --</p> <p>10 Q. (By Ms. Westfall) When it was in effect?</p> <p>11 MR. HALPERN: Calls, for a legal opinion.</p> <p>12 <b>A. I don't remember.</b></p> <p>13 Q. (By Ms. Westfall) Did you anticipate that the</p> <p>14 State was going to need to provide either the Department</p> <p>15 of Justice or a court with information about the effect</p> <p>16 of Senate Bill 362 on minority voters?</p> <p>17 <b>A. I'm not advised.</b></p> <p>18 <b>Q. Did you consider whether it was advisable to</b></p> <p>19 <b>determine the impact of Senate Bill 362 on minority</b></p> <p>20 <b>voters and make any adjustments in the bill, if</b></p> <p>21 <b>necessary, to increase the likelihood of preclearance?</b></p> <p>22 <b>A. During the time period of 2008 and 2009, we</b></p> <p>23 <b>looked at and were able to find evidence both in -- in</b></p> <p>24 <b>Indiana's case as well as several studies that were done</b></p> <p>25 <b>by universities and think tanks that showed that there</b></p>

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<p style="text-align: right;">77</p> <p>1 were no reduction in minority voter turnout in states 2 with a photo Voter ID or Voter ID. 3 Q. And those states would include Indiana -- or 4 only included Indiana and Georgia; is that correct? 5 A. Those were the two states that we had empirical 6 data from their Secretary of State's Office. But we 7 also searched and found studies -- empirical studies 8 that were done by a couple of universities and by one 9 think tank. 10 Q. Did all of these studies relate to voters 11 outside of the state of Texas? 12 A. Yes. 13 Q. At any time did you become aware of analysis 14 conducted by Representative Todd Smith in 2009 about the 15 number of voters who lacked a driver license? 16 A. No. 17 Q. What was the purpose of Senate Bill 362? 18 A. Purpose of 362 -- Senate Bill 362 was, like I 19 testified on House Bill 218, to reduce voter fraud. 20 Q. Was it only aimed at ensuring that voters who 21 appeared in the polls were who they said they were? 22 A. Yes. And you'll remember that I had testified 23 earlier, it was my desire to address ultimately at some 24 point, not only in-person voting, mail-in ballots and 25 also registration, but Exhibit 9 addressed only</p>	<p style="text-align: right;">79</p> <p>1 Q. Did you approve of this language before it was 2 released? 3 A. Let me read it. 4 Q. Certainly. 5 A. I believe I did. 6 Q. Do you see that you indicate that Senate Bill 7 362 will -- focuses on verifying voters' identity at the 8 polls; is that correct? 9 A. That is correct. 10 Q. And the purpose that is expressed in this press 11 release -- actually, strike that. 12 Are there any other purposes of Senate 13 Bill 362 that are not set forth in this press release? 14 MR. HALPERN: Objection, asked and 15 answered. 16 Q. (By Ms. Westfall) You may answer. 17 A. No, the purpose of Senate Bill 362 is to reduce 18 in-person voter fraud which will, in my judgment, after 19 talking to thousands of people, increase the confidence 20 of the voters in Texas of the integrity of our voting 21 system and result in a higher voter turnout as we've 22 seen in the case of Indiana and Georgia. 23 Q. Okay. We can put aside Exhibit 11. 24 How does the Senate adopt rules for the 25 regular session?</p>
<p style="text-align: right;">78</p> <p>1 in-person voting. 2 Q. Did you believe that in-person voter fraud was 3 the most important priority for the state of Texas at 4 that time? 5 MS. HALPERN: Objection -- 6 Q. (By Ms. Westfall) Of all -- of all voter frauds 7 that you just testified to? 8 A. No. 9 Q. Which voter fraud did you believe was the most 10 important? 11 A. I believe fraud is a bad, bad, bad problem 12 for -- in any area; in this case, our election laws. 13 And that's why in starting this process, we addressed 14 what we could. And in Senate Bill 362, it was in-person 15 fraud. 16 MS. WESTFALL: Could you mark this. 17 (Exhibit 11 marked for identification.) 18 Q. (By Ms. Westfall) You've been handed what's 19 been marked as Exhibit 11. Do you recognize this 20 document? 21 A. Yes. 22 Q. What is it? 23 A. It's a press release from my office. 24 Q. What does it pertain to? 25 A. Voter ID.</p>	<p style="text-align: right;">80</p> <p>1 A. The Senate adopts rules by meeting among the 2 members exclusively, closed door, I believe, and agree 3 on rules. 4 Q. And is this accomplished in the first one or 5 two days of session? 6 A. Yes. 7 Q. Is it -- are they voted on by a majority vote? 8 A. Yes. 9 Q. Before this Senate adopts rules, what rules 10 govern the Senate? 11 A. The previous rules. 12 Q. From the previous regular session? 13 A. Yes, unless those rules are changed during 14 special sessions. 15 Q. I see. So the rules, for the most, part carry 16 over from one session to the another; is that correct? 17 A. For the most part, but there's inevitably small 18 changes made each session. 19 Q. To your knowledge, have resolutions changing 20 the Senate rules ever been referred to a committee? 21 A. I'm not following your question. 22 Q. When a Senate resolution amending the rules at 23 the beginning of a session is introduced, is that 24 resolution referred to a committee for consideration or 25 is it considered by the whole Senate, typically?</p>

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21 (Pages 81 to 84)

<p style="text-align: right;">81</p> <p>1 <b>A. I'm still not -- I'm confused as to what you're</b> 2 <b>asking.</b> 3 Q. I'm sure -- I'm sure you're confused because 4 you know the procedures better than I do, but let me try 5 again. 6 At the beginning of a regular session when 7 there is a resolution, a Senate resolution to modify a 8 rule and to -- for all the rules for the regular session 9 to be adopted, is that resolution referred to a 10 committee or is it considered by the entire Senate? 11 <b>A. For clarity purposes, let me say that my</b> 12 <b>understanding, because I've never been to nor have I</b> 13 <b>attended a Senate members' closed-caucus in which they</b> 14 <b>discuss the rules, that's the prerogative of the</b> 15 <b>Senators. But following that meeting, traditionally, a</b> 16 <b>resolution is drafted and it's presented as all</b> 17 <b>resolutions are, on the Floor of the Senate.</b> 18 Q. Put differently: That Senate resolution -- 19 thank you for that clarification -- is not referred to a 20 committee? 21 <b>A. That is correct. Never is.</b> 22 Q. Are you aware of research that was conducted 23 before the 2009 session to determine a procedure to 24 increase the likelihood of Senate passage of a Voter ID 25 bill?</p>	<p style="text-align: right;">83</p> <p>1 2009 session? 2 <b>A. Senate Resolution 14 --</b> 3 Q. Yes. 4 <b>A. -- you said?</b> 5 Q. Yes. 6 <b>A. What does Senate Resolution --</b> 7 Q. Pertaining to the rules. 8 <b>A. Yes.</b> 9 Q. And I think it might be helpful if we mark a 10 document. 11 MS. WESTFALL: Could you mark this. Thank 12 you. 13 (Exhibit 12 marked for identification.) 14 Q. (By Ms. Westfall) You've been handed what's 15 been marked as Exhibit 12. Do you recognize this 16 document? 17 <b>A. I'm not aware that I've seen it before, but it</b> 18 <b>represents the Senate Journal for January 14, 2009.</b> 19 Q. If you could, turn your attention to Page 23 of 20 the Senate Journal. 21 <b>A. Yes.</b> 22 Q. It will -- it sets forth Senate Resolution 14, 23 which I just asked you about. Could you take a moment 24 just to take a look at that resolution and let me know 25 when you've a chance to the review it.</p>
<p style="text-align: right;">82</p> <p>1 MR. HALPERN: Objection, vague. 2 Q. (By Ms. Westfall) You may answer. 3 <b>A. Could you repeat your question?</b> 4 MS. WESTFALL: Counsel, please refrain 5 from the comments and coaching. 6 Q. (By Ms. Westfall) Are you aware of any research 7 that was conducted by Senators before the 2009 session 8 to determine a procedure to increase the likelihood of 9 the Senate's passage of a Voter ID bill? 10 <b>A. No.</b> 11 Q. Did Senator Williams look into any possible 12 changes to the rules in order to ensure that the Senate 13 would pass a Voter ID bill as opposed to what happened 14 with House Bill 218? 15 <b>A. I'm not advised.</b> 16 Q. What do you mean by "I'm not advised"? Does 17 that mean you don't know? 18 <b>A. I don't know what Senator Williams did or</b> 19 <b>didn't do.</b> 20 Q. Do you recall that Senate Resolution 14 was 21 introduced at the beginning of 2009 session by Senator 22 Williams? 23 <b>A. I'm sorry, say that again.</b> 24 Q. Do you recall that Senate Resolution 14 was 25 introduced by Senator Williams at the beginning of the</p>	<p style="text-align: right;">84</p> <p>1 <b>A. Yes.</b> 2 Q. Do you recall this Senate resolution? 3 <b>A. Yes.</b> 4 Q. What was it designed to accomplish? 5 <b>A. Several things: One of which, under D, that</b> 6 <b>bill of -- and I'm reading from Exhibit 12, in Rule</b> 7 <b>5.11D, "Notwithstanding Subsection A, a bill or</b> 8 <b>resolution relating to voter identification requirements</b> 9 <b>reported favorably from the Committee of the Whole</b> 10 <b>Senate may be set as a special order for a time at least</b> 11 <b>24 hours after the motion is adopted by a majority of</b> 12 <b>the members of the Senate."</b> 13 Q. What practical effect does that provision have, 14 in your own words? 15 <b>A. It permits, as a practical matter, photo voter</b> 16 <b>ID -- either photo voter ID or voter ID to be passed</b> 17 <b>with a majority vote instead of a two-thirds vote.</b> 18 Q. Are you aware of any other Senate rule where a 19 particular type of legislation was subject to this type 20 of procedure? 21 MR. HALPERN: Objection, vague, time 22 period. 23 Q. (By Ms. Westfall) You may answer. 24 <b>A. I'm not aware of a similar rule change.</b> 25 Q. When this resolution was introduced, were the</p>

<p style="text-align: right;">85</p> <p>1 rules of the previous -- previous Senate in effect?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Did Senator Shapleigh raise --</p> <p>4 <b>A. Until this -- until this resolution was</b></p> <p>5 <b>adopted.</b></p> <p>6 Q. Thank you. Did Senator Shapleigh raise a point</p> <p>7 of order against further consideration of Senate</p> <p>8 Resolution 14 in so far as it should be referred to a</p> <p>9 committee?</p> <p>10 <b>A. I don't know. I'll have to read to see.</b></p> <p>11 Q. Certainly. And I would --</p> <p>12 <b>A. Page 25?</b></p> <p>13 Q. Exactly. Thank you.</p> <p>14 So, yes, a point of order was made by</p> <p>15 Senator Shapleigh in that regard?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Did you rule on that point of order?</p> <p>18 <b>A. I did.</b></p> <p>19 Q. How did you rule?</p> <p>20 <b>A. I overruled it.</b></p> <p>21 Q. Why did you overrule it?</p> <p>22 <b>A. Because the rules of the Senate permitted a</b></p> <p>23 <b>majority of the Senators to change Senate rules, so</b></p> <p>24 <b>therefore, this resolution was entirely within the</b></p> <p>25 <b>tradition and rules of the Senate.</b></p>	<p style="text-align: right;">87</p> <p>1 Q. (By Ms. Westfall) So now that you have had a</p> <p>2 chance to look at Exhibit 12 and Senate Resolution 14,</p> <p>3 and in particular Rule 5.11D and Rule 16.07(7).</p> <p>4 <b>A. 16.07?</b></p> <p>5 Q. Which relates back to -- which also relates to</p> <p>6 Voter ID requirements. Do you see that?</p> <p>7 MR. HALPERN: What page?</p> <p>8 MS. WESTFALL: Page 25.</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. (By Ms. Westfall) Do you know where the idea to</p> <p>11 put this rule into place came from?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Where did it come from?</p> <p>14 <b>A. Senator Williams had indicated to me that he</b></p> <p>15 <b>was planning on suggesting this rule change.</b></p> <p>16 Q. How did he come up with this idea?</p> <p>17 MR. HALPERN: Objection, legislative</p> <p>18 privilege. Objection, calls for speculation.</p> <p>19 Q. (By Ms. Westfall) You may answer.</p> <p>20 <b>A. I have no idea.</b></p> <p>21 Q. So do you have -- do you have any idea, apart</p> <p>22 from what Senator Williams intended, as to where this</p> <p>23 provision came from?</p> <p>24 <b>A. No.</b></p> <p>25 Q. And is it your testimony that there was no</p>
<p style="text-align: right;">86</p> <p>1 Q. Did Senator Shapleigh raise a second point of</p> <p>2 order, on Page 27 and 28 of Exhibit 12?</p> <p>3 <b>A. You want to ask that again?</b></p> <p>4 Q. Sure. Did he raise a second point of order</p> <p>5 related to the scope of your authority under what was</p> <p>6 then the current existing rules?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. How did you rule on that point of order?</p> <p>9 <b>A. For the same grounds that I shared with you a</b></p> <p>10 <b>moment ago, I overruled.</b></p> <p>11 Q. Did you have any concerns that it was a</p> <p>12 conflict of interest to be ruling on your own scope of</p> <p>13 authority in that -- in that context?</p> <p>14 MR. HALPERN: Objection, no foundation,</p> <p>15 assumes facts not in evidence.</p> <p>16 Q. (By Ms. Westfall) You may answer.</p> <p>17 MS. HALPERN: Calls for a legal opinion.</p> <p>18 <b>A. In the opinion of both myself and the</b></p> <p>19 <b>Parliamentarian, I was -- there was no conflict of</b></p> <p>20 <b>interest nor was I ruling on rules that affected me.</b></p> <p>21 <b>Instead, I was ruling on whether or not -- irrespective</b></p> <p>22 <b>of the argument that Senator Shapleigh made, which I</b></p> <p>23 <b>found to be bogus, that the Senators have the rights</b></p> <p>24 <b>under the rules of the Senate to -- to make changes to</b></p> <p>25 <b>the rules whenever a majority chooses.</b></p>	<p style="text-align: right;">88</p> <p>1 precedent for this rule change of this nature?</p> <p>2 <b>A. That's not my testimony at all.</b></p> <p>3 Q. Then where -- do you know where it came from?</p> <p>4 <b>A. I have no idea where it came from, other than</b></p> <p>5 <b>this is an established rule that is used in -- from time</b></p> <p>6 <b>to time, not only in Texas but in other legislative</b></p> <p>7 <b>bodies.</b></p> <p>8 Q. And the established rule is -- could you</p> <p>9 describe the established rule you just testified to?</p> <p>10 <b>A. We have -- we have -- we recognize in Texas, in</b></p> <p>11 <b>our parliamentary proceedings, special items. And all</b></p> <p>12 <b>Senator Williams told me was that he was considering a</b></p> <p>13 <b>-- adding a special item to the rules.</b></p> <p>14 Q. Had you ever seen a special item added to the</p> <p>15 rules by subject matter as Senate Resolution 14, Rule</p> <p>16 5.11D does?</p> <p>17 <b>A. I don't remember ever seeing a special item</b></p> <p>18 <b>added in the Senate, the Senator's own rules, while I've</b></p> <p>19 <b>been Lieutenant Governor.</b></p> <p>20 MS. HALPERN: Have we been going an hour</p> <p>21 yet?</p> <p>22 THE REPORTER: Yes.</p> <p>23 MS. HALPERN: Let's take a break.</p> <p>24 MS. WESTFALL: What time is it?</p> <p>25 MS. HALPERN: It's 11:35.</p>

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23 (Pages 89 to 92)

<p style="text-align: right;">89</p> <p>1 MS. WESTFALL: Okay. Do you want to take 2 a quick break and then -- what time is good for lunch 3 for you all? 4 THE WITNESS: You tell me. 5 MS. WESTFALL: Oh, no, you're the witness, 6 you're in charge of lunch. 7 THE WITNESS: I'm in charge of lunch? 8 MS. WESTFALL: Yes. 9 THE WITNESS: Well, let's do a quick 10 break, come back and do another hour. 11 MS. WESTFALL: Super. That sounds very 12 good. But let's try to be quick. 13 (Recess from 11:33 a.m. to 11:47 a.m.) 14 Q. (By Ms. Westfall) Turning back to Exhibit 12, 15 why did Rule 5.11D state that voter ID bills would be 16 reported favorably from the Committee of the Whole may 17 be set for special order as opposed to the State Affairs 18 Committee? 19 <b>A. I'm not -- I don't know. I didn't write the</b> 20 <b>rule.</b> 21 Q. Did you have any involvement in the text of 22 5.11D whatsoever? 23 <b>A. No.</b> 24 Q. What was the effect of the Senate Resolution 14 25 section on Rule 16.07(7)?</p>	<p style="text-align: right;">91</p> <p>1 Q. Why did you refer Senate Bill 362 to the 2 Committee of the Whole? 3 <b>A. Because pursuant to Exhibit 12, the Senators</b> 4 <b>had changed the Senate rules to require that a bill on</b> 5 <b>Voter ID be referred to the Committee of the Whole.</b> 6 Q. Was that how you interpreted Senate Resolution 7 14? 8 <b>A. Yes.</b> 9 Q. That it obligated you to make that referral? 10 <b>A. Yes.</b> 11 Q. It was not within your discretion; is that 12 correct? 13 <b>A. Yes, if you look at 5.11D, it's clear.</b> 14 Q. And you interpreted that rule to require you to 15 refer this bill to the Committee of the Whole? 16 <b>A. Yes.</b> 17 Q. Did it have to be -- did the referral of the 18 bill to the Committee of the Whole have the effect of 19 expediting its consideration? 20 <b>A. No.</b> 21 Q. Are members prohibited from offering amendments 22 to bills while they're being considered by the Committee 23 of the Whole? 24 <b>A. No.</b> 25 Q. If an opponent of a bill wants to slow down</p>
<p style="text-align: right;">90</p> <p>1 <b>A. 16.07(7)?</b> 2 Q. Yes, and I would direct your attention to page 3 25 of Exhibit 12. 4 MS. HALPERN: Actually starts at the 5 bottom of page 24. 6 MS. WESTFALL: Thank you, yes. 7 <b>A. The effect of the new provision provided in</b> 8 <b>Rule 16.07(7) was to include voter ID and the special</b> 9 <b>order in the list of matters requiring a vote of a</b> 10 <b>majority of the members of the Senate.</b> 11 Q. (By Ms. Westfall) Had you ever in any previous 12 rule of a regular session seen a particular issue area 13 carved out or set for approval by a majority in Rule 16? 14 <b>A. Yes.</b> 15 Q. What rule was that? 16 <b>A. All the rules were subject to a simple majority</b> 17 <b>vote.</b> 18 Q. I see. 19 <b>A. All of them.</b> 20 Q. I see. On February 17, turning your attention 21 back to Exhibit 10, on February 17, 2009, was Senate 22 Bill 362 referred to the Committee of the Whole? 23 <b>A. Yes.</b> 24 Q. Were you the person to make this referral? 25 <b>A. Yes.</b></p>	<p style="text-align: right;">92</p> <p>1 consideration of a bill in a committee, other than the 2 Committee of the Whole, what procedures would the bill 3 opponent employ? 4 MS. HALPERN: Objection, calls for 5 speculation. 6 <b>A. Well, I'm going to have to think for a moment,</b> 7 <b>because there's a limited number of ways that an</b> 8 <b>opponent of the bill could slow down consideration in a</b> 9 <b>committee. One that quickly comes to mind is to try and</b> 10 <b>talk the chair of the committee into waiting on</b> 11 <b>consideration of the bill. Perhaps another option, as</b> 12 <b>was done in this case by the Democrats, and that is to</b> 13 <b>extend, by X amount of time, the consideration of the</b> 14 <b>bill by having a lot of public testimony.</b> 15 Q. (By Ms. Westfall) Are there any other ways you 16 can think of that would be employed in another 17 committee? 18 <b>A. No.</b> 19 Q. In 2009, do you recall advocating for including 20 in Voter ID legislation a grace period of two to four 21 years between the date of enactment and the date of 22 enforcement of the law? 23 MS. HALPERN: Objection, no foundation. 24 <b>A. Could you repeat your question?</b> 25 Q. (By Ms. Westfall) Certainly. In 2009, did you</p>



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<p style="text-align: right;">93</p> <p>1 advocate for including in Voter ID legislation a grace 2 period of two to four years between the date of 3 enactment and enforcing of the ID requirements in order 4 to educate voters? 5 MS. HALPERN: Objection, legislative 6 privilege. 7 <b>A. I don't remember whether I did or didn't.</b> 8 <b>(Exhibit 13 marked for identification.)</b> 9 Q. (By Ms. Westfall) You've been handed what's 10 been marked as Exhibit 13. Do you recognize this 11 document? 12 <b>A. No.</b> 13 Q. Do you see that there's a quote that is 14 attributed to you in the second paragraph? 15 <b>A. I see a paragraph that is attributed to me in</b> 16 <b>the second paragraph.</b> 17 Q. Do you believe that this is an accurate 18 quotation? 19 <b>A. I don't -- I don't believe so in light of your</b> 20 <b>question.</b> 21 Q. Do you believe that -- you did at this time -- 22 actually, what's the date of the article, Exhibit 13? 23 <b>A. If you look above the caption in bold it says</b> 24 <b>March 4, 2009.</b> 25 Q. Does this refresh your recollection as to</p>	<p style="text-align: right;">95</p> <p>1 related to this document will be designated as highly 2 confidential under the protective ECF 105 in this 3 action. This is TX87007 through TX87014. Do you 4 recognize this document? 5 <b>A. No.</b> 6 Q. Have you ever seen any of the attachments to 7 the e-mail to this document at 87008 through 87014? 8 <b>A. No.</b> 9 Q. Do you see the first page of this document, 10 87007, is an e-mail from Bryan Hebert to Janice McCoy? 11 <b>A. Yes.</b> 12 Q. Do you know whether Mr. Hebert had this e-mail 13 and attachments approved by anyone in your office before 14 it was circulated to Ms. McCoy? 15 <b>A. No.</b> 16 MS. HALPERN: Objection, no foundation. 17 <b>A. No.</b> 18 Q. (By Ms. Westfall) Okay. Do you see that at 19 Texas 00087008 lists reasons to support Senate Bill 362 20 as filed? 21 <b>A. Yes.</b> 22 Q. And could you take a look at list 1 through 5 23 and let me know when you've had a chance to review them? 24 <b>A. Yes.</b> 25 Q. Did you discuss any of these reasons to support</p>
<p style="text-align: right;">94</p> <p>1 whether you were advocating for a grace period of two to 2 four years in 2009? 3 <b>A. You're going to have to define grace period for</b> 4 <b>what?</b> 5 Q. What did you -- what did you mean when you were 6 advocating for a grace period of two to four years? 7 MS. HALPERN: Objection, no foundation, 8 assumes facts not in evidence. 9 Q. (By Ms. Westfall) You may answer. 10 <b>A. I was not advocating for a postponement of the</b> 11 <b>-- the validity of the bill for two to four years.</b> 12 Q. What were you advocating for? 13 MS. HALPERN: Objection, assumes facts not 14 in evidence. 15 <b>A. A phase-in on elderly voters without ID,</b> 16 <b>principally voters in their 70s. Although increasingly</b> 17 <b>voters in their 70s don't strike me as elderly anymore.</b> 18 Q. (By Ms. Westfall) Were you advocating for a 19 phase-in for any other classes of voters in 2009? 20 <b>A. No.</b> 21 MS. WESTFALL: Could you mark this? 22 (Exhibit 14 marked for identification.) 23 Q. (By Ms. Westfall) You've been handed what's 24 been marked as Exhibit 14. Do you -- and this document, 25 I should add, is highly confidential, and questions</p>	<p style="text-align: right;">96</p> <p>1 Senate Bill 362 as filed with Mr. Hebert? 2 <b>A. No.</b> 3 MS. HALPERN: Objection, attorney-client 4 privilege. 5 <b>A. Sorry.</b> 6 MS. HALPERN: Legislative privilege. 7 MS. WESTFALL: I would object to your 8 objection on the basis of attorney-client privilege as 9 Mr. Hebert circulated these documents to someone who is 10 not his client, Ms. McCoy. 11 MS. HALPERN: But any discussions about 12 that would be a verbal discussion which would be 13 attorney-client. 14 Q. (By Ms. Westfall) Turning back to Reasons To 15 Support Senate Bill 362 as Filed. Do you see that it 16 indicates there is -- Mr. Hebert writes, "There's less 17 of a chance of disenfranchising elderly, poor or 18 minority voters," under 1? 19 <b>A. Yes.</b> 20 Q. Did you agree with that statement? 21 <b>A. No.</b> 22 Q. Do you know why he wrote that statement? 23 MS. HALPERN: Objection, calls for 24 speculation. 25 Q. (By Ms. Westfall) You may answer.</p>

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25 (Pages 97 to 100)

<p style="text-align: right;">97</p> <p>1 A. Not to hurt your feelings, but the Department 2 of Justice has a very partisan reputation, and I have 3 had conversations with Mr. Hebert in which we have to 4 dot our I's and cross our T's to make sure that we get 5 preclearance on the bill.</p> <p>6 Q. So I guess turning back to my question, I 7 believe your testimony was you did not agree with this 8 assessment in 1 that it had less chance of 9 disenfranchising elderly, poor or minority voters?</p> <p>10 A. Oh, I'm so glad you asked me that question. 11 Thank you very much. Thank you. Thank you very 12 much. I may have left, for history, an impression. I 13 don't agree that there was any chance that it 14 disenfranchised elderly, poor or minority voters. All 15 of the empirical data has shown just the opposite.</p> <p>16 Q. Okay.</p> <p>17 A. And my -- and my -- pardon me, but my cute 18 comment was to say that there is a healthy respect 19 and -- of the Department of Justice, as we should, and 20 also a feeling that under this administration, it 21 doesn't like Texas.</p> <p>22 Q. Okay. Getting back -- let's see -- I guess I 23 wanted to ask you, as to 1, whether you believed that 24 Senate Bill 362 was less likely to disenfranchise 25 elderly, poor or minority voters because it permitted</p>	<p style="text-align: right;">99</p> <p>1 A. I don't know.</p> <p>2 Q. Would it be contrary to the policies of your 3 office to allow staff to set forth positions on bills 4 and policy on law that were contrary to the position of 5 your office?</p> <p>6 MS. HALPERN: Objection.</p> <p>7 A. I consider my office, and I still do, a 8 resource for the other Senators. To the extent that any 9 one of our staff thought it was helpful, whether we're 10 talking about policy matter and working with different 11 Senators and their staffs or providing some guidelines 12 in discussing a bill, that is something that I 13 encouraged.</p> <p>14 Q. (By Ms. Westfall) And you would not permit 15 your staff to send out analysis that you didn't agree 16 with; isn't that right?</p> <p>17 A. You are putting words in my mouth. I've never 18 said that.</p> <p>19 Q. You can -- you can disagree.</p> <p>20 A. I just got through saying I think twice, two or 21 three times, Counsel, that I do not agree with this 22 statement. I do not believe that there's -- that under 23 Senate Bill 362, or for that matter, Senate Bill 14, 24 that there's a disenfranchment of elderly, poor or 25 minority voters.</p>
<p style="text-align: right;">98</p> <p>1 the use of nonphoto ID?</p> <p>2 A. Well, first of all, I don't believe that Senate 3 Bill 362 disenfranchises elderly, poor or minority 4 voters. And all the empirical data that I've seen shows 5 just the opposite.</p> <p>6 Q. Is it fair to say that Voter ID legislation 7 that did not allow for the use of nonphoto ID would have 8 a greater chance of disenfranchising elderly, poor or 9 minority voters?</p> <p>10 MR. BRISSENDEN: Objection, form.</p> <p>11 Q. (By Ms. Westfall) You may answer.</p> <p>12 A. Could you repeat your question?</p> <p>13 Q. Certainly. Would you agree that photo ID 14 legislation that did not include the use of nonphoto ID 15 would have a greater chance of disenfranchising elderly, 16 poor or minority voters?</p> <p>17 A. I categorically oppose that statement. It is 18 not true. All the empirical data I've seen has shown 19 that there is no -- no example that I'm aware of where 20 in any jurisdiction with a photo voter ID requirement 21 that individuals have not been able to obtain access to 22 acceptable documents.</p> <p>23 Q. Did Mr. Hebert circulate legal analysis and 24 policy advice to other staff people without people in 25 your office reviewing it before it went out?</p>	<p style="text-align: right;">100</p> <p>1 Q. So does -- does an ID law that does include 2 nonphoto ID make it harder or easier for elderly, poor 3 or minority voters to participate in elections?</p> <p>4 MR. BRISSENDEN: Objection, form, 5 compound.</p> <p>6 Q. (By Ms. Westfall) You may answer.</p> <p>7 MS. HALPERN: Objection, assumes -- 8 objection, compound.</p> <p>9 A. You're asking whether it would make it easier 10 for elderly, poor or minority voters to obtain access to 11 the documents required?</p> <p>12 Q. (By Ms. Westfall) Well, to vote by including 13 nonvoter -- nonphoto ID among acceptable forms of ID.</p> <p>14 MR. BRISSENDEN: Objection, form.</p> <p>15 Q. (By Ms. Westfall) Does it make it easier or 16 harder for those classes of voters to participate in an 17 election?</p> <p>18 A. Since I'm not aware of any empirical data that 19 shows that there's been a -- individuals in states that 20 require photo voter ID that have not been able to obtain 21 access to documents, I'm really reluctant to speculate, 22 purely speculate on that.</p> <p>23 Q. Do you see that it explains that Senators 24 Fraser, Williams and Duncan supported this version of 25 the bill?</p>

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<p style="text-align: right;">101</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. Did -- was that your understanding?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Why was it a reason to support Senate Bill 362</p> <p>5 that those members were supporting the bill?</p> <p>6 MS. HALPERN: Objection, calls for</p> <p>7 speculation.</p> <p>8 Q. (By Ms. Westfall) You may answer.</p> <p>9 <b>A. Senator Fraser, Senator Williams and Duncan</b></p> <p>10 <b>were three Senators who were widely respected and had</b></p> <p>11 <b>worked in this area before.</b></p> <p>12 Q. Okay. Turning your attention now to the</p> <p>13 Talking Points at 87009 on the following page, and --</p> <p>14 you've never seen these talking points before; is that</p> <p>15 correct?</p> <p>16 <b>A. That's correct.</b></p> <p>17 Q. Do you see that under Roman II, it argues that</p> <p>18 this bill, Senate Bill 362, protects Texas voters and</p> <p>19 lists a number of ways in which it does that?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Do you agree with that assessment?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Turning your attention now to the last page of</p> <p>24 this document, Texas 00087014, concerning the process of</p> <p>25 obtaining a birth certificate, do you see that? Had you</p>	<p style="text-align: right;">103</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. It was not in the text to Senate Bill 362,</p> <p>3 correct?</p> <p>4 <b>A. No.</b></p> <p>5 Q. Is it fair to say that you were aware of the</p> <p>6 cost of obtaining a Texas birth certificate in 2009?</p> <p>7 <b>A. I was aware that there may be some cost. I'm</b></p> <p>8 <b>not -- I don't remember whether I knew, as Exhibit 14</b></p> <p>9 <b>points out, that -- that it was a cost of \$22. That</b></p> <p>10 <b>surprises me. But I knew there was a cost for obtaining</b></p> <p>11 <b>some of the documents, and I wanted to get that down to</b></p> <p>12 <b>zero.</b></p> <p>13 Q. What steps --</p> <p>14 <b>A. Because my goals were to increase voter</b></p> <p>15 <b>turnout.</b></p> <p>16 Q. What steps did you take to get that, get that</p> <p>17 cost to zero, besides telling the birth certificate</p> <p>18 issuance people that they needed to fix that?</p> <p>19 MS. HALPERN: Objection, Counsel, during</p> <p>20 what time frame?</p> <p>21 MS. WESTFALL: During 2009. We're</p> <p>22 testifying about 2009.</p> <p>23 <b>A. But Counsel, the -- I've answered your question</b></p> <p>24 <b>before by saying that my first priority was to get the</b></p> <p>25 <b>bill passed. Then the implementation of the rules --</b></p>
<p style="text-align: right;">102</p> <p>1 seen this document or a summary of this information</p> <p>2 previous to today's deposition?</p> <p>3 <b>A. No.</b></p> <p>4 Q. Did you have any discussion with any senator</p> <p>5 about the cost of obtaining a Texas birth certificate or</p> <p>6 a DPS ID card in 2009?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Who did you discuss this with?</p> <p>9 <b>A. I discussed with Senator Fraser and several</b></p> <p>10 <b>other Senators that, as the rules were promulgated by</b></p> <p>11 <b>the DPS and/or other agencies, that we wanted to -- to</b></p> <p>12 <b>reduce any cost of obtaining documents required to vote.</b></p> <p>13 Q. Was this in 2009 --</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. -- to your recollection? Did you take any</p> <p>16 steps to make that happen in the bill?</p> <p>17 <b>A. Counsel, I'm -- pardon me, but a lot of times</b></p> <p>18 <b>the implementation of bills are handled by agencies that</b></p> <p>19 <b>have the responsibility and so that was -- that was my</b></p> <p>20 <b>conversation with several Senators, including Senator</b></p> <p>21 <b>Fraser, and I believe I communicated it to the agencies.</b></p> <p>22 Q. Was this left to the agencies to implement?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. The reduction of cost, was it left to the</p> <p>25 agencies?</p>	<p style="text-align: right;">104</p> <p>1 <b>the implementation of the bill through rules to be</b></p> <p>2 <b>issued by the agencies is -- is always done. And in</b></p> <p>3 <b>during that process, I told them it was my intent to</b></p> <p>4 <b>have the cost reduced as I have done subsequent in</b></p> <p>5 <b>Senate Bill 14.</b></p> <p>6 Q. (By Ms. Westfall) We'll talk about that a</p> <p>7 little bit later. Thank you for your testimony.</p> <p>8 Were you present -- strike that.</p> <p>9 Did you believe in 2009 that any of the</p> <p>10 costs associated with the documents -- of the underlying</p> <p>11 documents necessary to obtain photo ID would be costly</p> <p>12 for some voters?</p> <p>13 <b>A. No, because it was my intent during the</b></p> <p>14 <b>implementation, once the bill had passed during the</b></p> <p>15 <b>implementation of the bill by the agencies to reduce</b></p> <p>16 <b>that cost.</b></p> <p>17 Q. Were you present during the Committee of the</p> <p>18 Whole's consideration of Senate Bill 362?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Do you recall hearing concerns raised by some</p> <p>21 bill opponents about the impact of Senate Bill 362 on</p> <p>22 minority voters?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. Did supporters, to your knowledge, of Senate</p> <p>25 Bill 362 take any steps to investigate those concerns?</p>

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27 (Pages 105 to 108)

<p style="text-align: right;">105</p> <p>1 A. Yes.</p> <p>2 Q. What were those steps?</p> <p>3 A. The location of a number of different studies</p> <p>4 that had been made in other states on the effect on</p> <p>5 minority voters, particularly elderly voters, minority</p> <p>6 voters, to see if there was a reduction in minority and</p> <p>7 elderly voter turnout, and we found that there was not.</p> <p>8 Q. Was there any other way that bill supporters</p> <p>9 responded to those concerns other than what you just</p> <p>10 testified to?</p> <p>11 A. I'm not sure of the dates, but there was an</p> <p>12 attempt to go back into DPS and find out how many</p> <p>13 driver's licenses were issued, but it was impossible at</p> <p>14 that time to be able to correlate between the number of</p> <p>15 driver's licenses issued and who were voters, and so</p> <p>16 that effort which we made was -- was unsuccessful.</p> <p>17 Q. Senate Bill 362 was not passed by the House; is</p> <p>18 that correct?</p> <p>19 A. That is correct. We passed it in the Senate.</p> <p>20 Q. Did it pass with a majority of the Senators in</p> <p>21 the Senate?</p> <p>22 A. Yes.</p> <p>23 Q. And not two-thirds; is that correct?</p> <p>24 A. That is correct because of the rule change.</p> <p>25 Q. Do you know why Senate Bill 362 failed to pass</p>	<p style="text-align: right;">107</p> <p>1 Q. What did you believe could be done differently</p> <p>2 to ensure passage of Voter ID legislation in the 2011</p> <p>3 session than had been done in 2009?</p> <p>4 MS. HALPERN: Objection, legislative</p> <p>5 privilege.</p> <p>6 A. Well, one, take the bill up earlier and pass it</p> <p>7 earlier to make it more difficult for the opponents of</p> <p>8 the bill to chub it in the House.</p> <p>9 Q. (By Ms. Westfall) Did you take any other --</p> <p>10 any other -- or think of any other steps that should be</p> <p>11 taken to ensure its passage in the Legislature other</p> <p>12 than what you just described?</p> <p>13 MS. HALPERN: Objection, legislative</p> <p>14 privilege.</p> <p>15 Q. (By Ms. Westfall) You may answer.</p> <p>16 A. Not that I recall.</p> <p>17 Q. Did you play a role in developing the strategy</p> <p>18 to ensure that the Legislature would pass Voter ID in</p> <p>19 2011?</p> <p>20 A. As I do on any of our important bills, several</p> <p>21 hundred per session, I discussed with staff the optimum</p> <p>22 times to pass Voter ID as well as other bills.</p> <p>23 Q. What was your conclusion about the optimum time</p> <p>24 to pass Voter ID in 2011?</p> <p>25 MS. HALPERN: Objection, legislative</p>
<p style="text-align: right;">106</p> <p>1 in the House?</p> <p>2 A. If you will permit me to take a look at the</p> <p>3 legislative history on 362.</p> <p>4 Q. Of course.</p> <p>5 MS. WESTFALL: And for the record, the</p> <p>6 witness is referring to Exhibit 10, the legislative</p> <p>7 history of Senate Bill 362.</p> <p>8 A. Yes.</p> <p>9 Q. (By Ms. Westfall) Why did it fail to pass the</p> <p>10 House?</p> <p>11 A. With no criticism intended, the House let the</p> <p>12 bill sit from the day it was received from the Senate on</p> <p>13 March 19th for almost two weeks until March 31st, and</p> <p>14 then after a -- taking testimony in the House on April</p> <p>15 7th, it sat for almost five weeks.</p> <p>16 Q. And so there was not sufficient time in the</p> <p>17 session to get it passed in the House?</p> <p>18 A. It was -- it was placed on major state</p> <p>19 calendar, and if I recall correctly, the Democrats</p> <p>20 chubbed it to death, meaning, they talked and talked and</p> <p>21 talked on routine matters, killing routine bills in</p> <p>22 order to kill the bill.</p> <p>23 Q. Did you want the Senate to pass the Voter ID</p> <p>24 bill in 2011?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">108</p> <p>1 privilege.</p> <p>2 A. That it was better for the final passage of</p> <p>3 Voter ID if we could pass it within the 60-day</p> <p>4 prohibition of where no legislation can be passed.</p> <p>5 Under the Texas Constitution, the first 60 days, one is</p> <p>6 prohibited from passing any legislation unless it's</p> <p>7 placed on emergency call by Governor Perry.</p> <p>8 Q. (By Ms. Westfall) Did you think of any other</p> <p>9 measures that needed to be taken to ensure enactment of</p> <p>10 Voter ID in 2011?</p> <p>11 A. Not that I recall.</p> <p>12 Q. Did you consider it important to readopt the</p> <p>13 rules in the 2009 rules?</p> <p>14 A. Counsel, you're leading again. You've been</p> <p>15 doing that repeatedly. You're leading. You -- it is --</p> <p>16 I didn't -- I didn't adopt the Senate rules. I thought</p> <p>17 I had been very, very clear. The Senate rules are</p> <p>18 adopted solely by the Senators.</p> <p>19 Q. Did you believe the Senators, not you, but the</p> <p>20 Senators should adopt the same rule that had been</p> <p>21 adopted in 2009?</p> <p>22 MS. HALPERN: Objection, legislative</p> <p>23 privilege.</p> <p>24 A. Yes. However, it's a matter of timing.</p> <p>25 Because I don't know if I said earlier, I don't</p>

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28 (Pages 109 to 112)

<p style="text-align: right;">109</p> <p>1 remember, but I frequently did not recognize the</p> <p>2 two-thirds rule during special sessions. So what -- in</p> <p>3 a special session involving redistricting, as we had in</p> <p>4 a number of cases, and again, in June of 2011, I did not</p> <p>5 have a blocker bill, meaning, we passed all the</p> <p>6 legislation on the call with a simple majority.</p> <p>7 Q. (By Ms. Westfall) That was in regular</p> <p>8 session --</p> <p>9 A. Special session.</p> <p>10 Q. -- or special? Is special session always</p> <p>11 subject to majority rule? And special session -- I'm</p> <p>12 sorry, go ahead.</p> <p>13 MS. HALPERN: There's no question pending.</p> <p>14 MS. WESTFALL: I just -- can you read back</p> <p>15 the question and then.</p> <p>16 (Requested portion read back by the court</p> <p>17 reporter.)</p> <p>18 Q. (By Ms. Westfall) Is special session always</p> <p>19 subject to majority votes to pass legislation and not</p> <p>20 two-thirds?</p> <p>21 A. It's up to the -- to the Lieutenant Governor.</p> <p>22 Q. Had the special sessions while you have been</p> <p>23 Lieutenant Governor only pertained to redistricting or</p> <p>24 other topics?</p> <p>25 A. Both.</p>	<p style="text-align: right;">111</p> <p>1 session in 2013?</p> <p>2 A. Yes.</p> <p>3 Q. What did the special session pertain to?</p> <p>4 A. Redistricting in that we had a change in law</p> <p>5 on -- on one of our terms that we were using -- I'm</p> <p>6 sorry. Strike redistricting. We had a change in -- in</p> <p>7 a -- in one of our statutes to comply with a change in</p> <p>8 federal law. We took up Senate Bill 5 and -- I'm sorry,</p> <p>9 a House Bill 5 and House Bill 2 on -- on the health of</p> <p>10 women and changing the term on abortion. We took up a</p> <p>11 huge transportation bill in a constitutional amendment</p> <p>12 and others.</p> <p>13 Q. Did you prior to the 2011 session discuss with</p> <p>14 Senator Fraser filing another Voter ID bill?</p> <p>15 MS. HALPERN: Objection, legislative</p> <p>16 privilege.</p> <p>17 A. Yes.</p> <p>18 Q. (By Ms. Westfall) When did you talk to him</p> <p>19 about that?</p> <p>20 A. Sometime during the fall of 2012 -- I'm sorry,</p> <p>21 sometime during the fall of 2010, excuse me.</p> <p>22 Q. Did part of that discussion -- actually, strike</p> <p>23 that.</p> <p>24 What -- what did the discussion involve --</p> <p>25 MS. HALPERN: Objection.</p>
<p style="text-align: right;">110</p> <p>1 Q. What years have they pertained to</p> <p>2 redistricting?</p> <p>3 A. 2003 and 2011.</p> <p>4 Q. Have there been other special sessions during</p> <p>5 the time that you've been Lieutenant Governor other than</p> <p>6 2003 and 2011?</p> <p>7 A. Yes.</p> <p>8 Q. What years have those been?</p> <p>9 A. 2004, 2005, 2009, 2011 and 2013.</p> <p>10 Q. Do you -- for 2003, did it only pertain to</p> <p>11 redistricting or other legislation?</p> <p>12 A. Only redistricting.</p> <p>13 Q. 2004, what did it pertain to?</p> <p>14 A. School finance.</p> <p>15 Q. And 2005, what did it pertain to?</p> <p>16 A. School finance.</p> <p>17 Q. 2009, what did it pertain to?</p> <p>18 A. Three -- three bills concerning eminent domain</p> <p>19 and transportation -- strike eminent domain.</p> <p>20 Transportation and two others bills.</p> <p>21 Q. In 2011, was it only redistricting?</p> <p>22 A. No, it was redistricting, sanctuary cities,</p> <p>23 school finance, TSA antigroping bill, and others.</p> <p>24 Q. In 2013, what did it pertain to? That was --</p> <p>25 there was a special session in addition to the regular</p>	<p style="text-align: right;">112</p> <p>1 Q. (By Ms. Westfall) -- subject-wise?</p> <p>2 MS. HALPERN: Objection, legislative</p> <p>3 privilege.</p> <p>4 A. What I remember is a discussion with Senator</p> <p>5 Fraser to inquire whether he was willing to carry a</p> <p>6 Voter ID bill again.</p> <p>7 Q. (By Ms. Westfall) Did you discuss any other</p> <p>8 provisions of the bill?</p> <p>9 A. Yes.</p> <p>10 Q. What were the provisions you discussed?</p> <p>11 A. I reminded Senator Fraser that for then -- for</p> <p>12 then six long years, I had been meeting regularly with</p> <p>13 the Democrat Senators to agree on a bipartisan bill,</p> <p>14 because the Democrat Senators recognized that they were</p> <p>15 on the wrong side of the majority of the voters of</p> <p>16 Texas. They recognized that a super majority of, not</p> <p>17 only Anglo, but Hispanic and African American voters,</p> <p>18 during that time period from 2008 through 2011, were in</p> <p>19 favor of a Voter ID, and that we really ought to work</p> <p>20 together and come up with a bill.</p> <p>21 All of the flexibility afforded in 218 and</p> <p>22 362 was voted against time after time by -- by the</p> <p>23 Democrat voters. While in the House, a number of</p> <p>24 minority voters voted for those bills. And I discussed</p> <p>25 with Senator Fraser that maybe it's time to focus</p>



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<p style="text-align: right;">113</p> <p><b>1 inclusively on a bill that is -- that is clearly</b>  <b>2 constitutional by modeling this after the Indiana and</b>  <b>3 Georgia bills.</b></p> <p>4 Q. And therefore, you were -- as part of that  5 discussion, did you discuss whether to include or  6 exclude nonphoto ID from the bill?</p> <p>7 <b>A. I don't remember the detail that we went into,</b>  8 <b>but I shared with you the main objective, which I shared</b>  9 <b>with Senator Fraser.</b></p> <p>10 Q. Were you or your staff involved in developing  11 the language for the bill, Senate Bill 14?</p> <p>12 <b>A. I don't remember.</b></p> <p>13 Q. Do you know whether Mr. Hebert was involved in  14 developing the language?</p> <p>15 <b>A. I don't remember.</b></p> <p>16 Q. What was Mr. Hebert's degree of involvement in  17 kind of the prefiling discussions?</p> <p>18 <b>A. There you go again, Counsel. We have --</b>  19 <b>there's no testimony that he was involved in the first</b>  20 <b>place. Come on.</b></p> <p>21 Q. I'm trying to make sure I understand your  22 testimony --</p> <p>23 <b>A. Then ask me a question.</b></p> <p>24 Q. -- by asking a complete question. Was  25 Mr. Hebert involved at all in the development of Senate</p>	<p style="text-align: right;">115</p> <p><b>1 of State Affairs where election bills go to but for the</b>  <b>2 change in the Senate rules, in which I was directed to</b>  <b>3 send this to the Committee of the Whole. And Senator</b>  <b>4 Williams was a key lieutenant on the Floor during --</b>  <b>5 during Senate Bill 362 of -- of Senator Fraser in</b>  <b>6 carrying part of the physical load of -- of discussing</b>  <b>7 and asking questions during a 26, 27-hour session.</b></p> <p>8 Q. Do you know what sources were consulted when  9 Senate Bill 14 was being developed?</p> <p>10 <b>A. What do you mean by sources?</b></p> <p>11 Q. Was Senate Bill 362 a starting point in any  12 way --</p> <p>13 MS. HALPERN: Objection.</p> <p>14 Q. (By Ms. Westfall) -- or no?</p> <p>15 MS. HALPERN: Calls for speculation.</p> <p>16 Q. (By Ms. Westfall) You may answer.</p> <p>17 <b>A. Well, I know that Senate Bill 218 was the</b>  <b>18 starting point for Senate Bill 362, and although not</b>  <b>19 perfect, it was a start to reduce fraud. And I've</b>  <b>20 talked about my objective of addressing all three forms</b>  <b>21 or maybe a fourth of fraud. But as a starting point.</b>  <b>22 And I don't remember exactly the transition between the</b>  <b>23 language in 362 and Senate Bill 2 -- and Senate Bill 14.</b></p> <p>24 Q. Thank you.</p> <p>25 MS. HALPERN: It is 12:30.</p>
<p style="text-align: right;">114</p> <p>1 Bill 14?</p> <p>2 <b>A. I don't remember. Again, again, again, to be</b>  3 <b>-- to be as open as I possibly can be, the -- Mr. Hebert</b>  4 <b>had been a resource for some of the staff members with</b>  5 <b>Senator Fraser and -- but I don't know whether that</b>  6 <b>continued or not continued. I'm sure it did.</b></p> <p>7 Q. During the Senate's consideration of Senate  8 Bill 14, how often did you communicate with Mr. Hebert  9 about Voter ID?</p> <p>10 <b>A. When I had a question.</b></p> <p>11 Q. Was that daily?</p> <p>12 <b>A. No.</b></p> <p>13 Q. Weekly?</p> <p>14 <b>A. I don't think so.</b></p> <p>15 Q. About how frequently was it? Do you recall?</p> <p>16 <b>A. Couple of times a month.</b></p> <p>17 Q. Do you know whether any other Senators were  18 involved in developing the bill language for Senate Bill  19 14? And strike that.</p> <p>20 Were Senator's staff, not other Senators,  21 Senator's staff involved in developing the bill language  22 for Senate Bill 14?</p> <p>23 <b>A. I believe that there was a working group that</b>  24 <b>-- that involved Senator Duncan. Again, not only was he</b>  25 <b>a senior member and well respected, but he was a Chair</b></p>	<p style="text-align: right;">116</p> <p>1 MS. WESTFALL: Do you want a break?  2 (Brief discussion off the record.)</p> <p>3 MS. WESTFALL: We'll mark an exhibit.  4 (Exhibit 15 marked for identification.)</p> <p>5 Q. (By Ms. Westfall) You've been handed what's  6 been marked as Exhibit 15. Do you recognize this  7 document?</p> <p>8 <b>A. It is entitled "Senate Bill 14."</b></p> <p>9 Q. Turning your attention to the bottom of the  10 document, do you see the date?</p> <p>11 <b>A. It shows January 12, 2011.</b></p> <p>12 Q. And I will represent to you that this came off  13 the Texas Legislature Online website, and it is the  14 Senate Bill 14 as filed --</p> <p>15 <b>A. As filed?</b></p> <p>16 Q. -- in the Senate.</p> <p>17 Turning your attention to Page 8 of  18 Exhibit 15, do you see that it lists the documentation  19 of proof of ID?</p> <p>20 <b>A. I do.</b></p> <p>21 Q. And do you see that it lists two forms of state  22 IDs, driver's license and personal ID cards, and three  23 forms of federally issued forms of ID, a U.S. passport,  24 a military ID and a U.S. citizenship certificate?</p> <p>25 <b>A. Yes.</b></p>

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30 (Pages 117 to 120)

<p style="text-align: right;">117</p> <p>1 Q. And is it true that under Senate Bill 14, as 2 introduced, that that was the sum total of the IDs 3 permitted? 4 <b>A. That appears to be the case.</b> 5 Q. Are you aware of the criteria used for 6 determining which photo IDs to include in Senate Bill 7 14? 8 <b>A. Only generally repeating my testimony of a 9 moment ago that there had been a discussion in the fall 10 of 2010 about modeling our -- the next bill that was 11 introduced in 2011 on the Indiana bill and the Georgia 12 bill, principally because I wanted to make sure that 13 after years of trying to pass a fair bill, that we got 14 one passed that was imminently constitutional and met 15 all of the tests.</b> 16 Q. Did you give any consideration as to whether 17 these forms of ID would indicate whether the voter was 18 eligible to vote under Texas law, or was that not a 19 criteria? 20 <b>A. To -- to reduce voter fraud, we wanted to limit 21 voters who are eligible to vote and residents of the 22 state of Texas and voting in the county in which they 23 lived. And so I remember that there was some 24 conversation that these -- these items of identification 25 would -- would ensure that eligible voters voted, which</b></p>	<p style="text-align: right;">119</p> <p>1 <b>to -- to eligible voters, because if memory serves, I'm 2 looking for any heads to nod or not, but if memory 3 serves, at this time, the Department of Public Safety 4 had a practice of issuing a different type of -- of 5 driver's license to people that were visiting here, 6 student visas, things of that nature.</b> 7 Q. Is it true that -- and I think you've testified 8 about this earlier, but as to the passport, the passport 9 does not indicate the address where the person resides; 10 is that correct? 11 <b>A. That is correct.</b> 12 Q. So it's possible that someone who did not 13 reside in the county or the state of Texas could use a 14 passport and that person would not be eligible to 15 participate in the election; is that correct? 16 <b>A. With the exception that a person who is using a 17 United States passport to vote has, by definition, 18 already signed an affidavit under perjury under law that 19 they are a resident of X County, and although they would 20 be -- the only thing that would disqualify them is if in 21 fact they were not a resident of the state of Texas in 22 the county in which they're voting.</b> 23 Q. Are you aware that there are a number of 24 eligibility requirements to be -- to become registered 25 in the state of Texas in addition to being a U.S.</p>
<p style="text-align: right;">118</p> <p>1 <b>was our goal.</b> 2 Q. Okay. So is it your testimony that these forms 3 of ID do indicate and do confirm that the voter is 4 eligible in addition to proving that the voter is who 5 she says she is at the polls? 6 MS. HALPERN: Objection, vague. 7 <b>A. I want to start from the bottom, because that's 8 where I'm looking. Section 63.0101, Subsection 4, would 9 indicate that the -- that the presentation of a U.S. 10 passport that's not expired would be an indication that 11 the person, as long as they're -- that they're a Texas 12 resident residing in the county that they vote is an 13 eligible voter. As would Subsection 3 above. I'm not 14 advised on Number 2, a military ID.</b> 15 Q. (By Ms. Westfall) Is it true that permanent 16 residents are allowed to serve in the U.S. military area 17 and permanent residents of the U.S. would be able to 18 obtain a military photo ID, to your knowledge? 19 <b>A. If that's -- if you represent that, if you 20 warrant that to be the case, I'll agree, but I don't -- 21 I don't -- I don't know whether permanent residents 22 and/or nonresidents are allowed to serve in the United 23 States military. I don't know that off the top of my 24 head. Number 1, I believe that -- I believe that Number 25 1, would limit -- the use of Number 1 would limit this</b></p>	<p style="text-align: right;">120</p> <p>1 citizen and being a resident of the county of Texas in 2 which you are registering? 3 <b>A. I'm presupposing you're going to clarify this 4 for me and refresh my memory.</b> 5 Q. I'm happy to. 6 MS. WESTFALL: Could you mark this? 7 (Exhibit 16 marked for identification.) 8 Q. (By Ms. Westfall) You've been handed what's 9 been marked as Exhibit 16. Do you recognize this 10 document? 11 <b>A. It looks to be a -- a voter registration form 12 from the -- from the Dallas County Registrar of Voters.</b> 13 Q. And turning your attention to the second page 14 of Exhibit 16, do you see that it lists a number of 15 items that voters must attest to in order to become 16 registered to vote? 17 <b>A. Yes, I -- a moment ago -- and I plead being a 18 little tired from traveling the last several days, 19 Counsel, but yes, you must be a citizen of the United 20 States. You must be registered to vote in the county in 21 which you reside. You must be at least 18 years old as 22 of the date of the election. You must not have been 23 convicted of a felony. Et cetera. And you must not 24 have been determined by a court to be mentally 25 incapacitated without the right to vote.</b></p>

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<p style="text-align: right;">121</p> <p>1 Q. So comparing these requirements in a Texas 2 voter registration application and the documents that 3 you -- with which you can prove identification under 4 Senate Bill 14, as introduced, do these forms of 5 identification listed under Senate Bill 14 necessarily 6 show that you are eligible in every aspect to be 7 registered to vote under Texas law?</p> <p>8 MR. BRISSENDEN: Objection, form.</p> <p>9 Q. (By Ms. Westfall) You may answer.</p> <p>10 A. Well, when you used the word every, I'm 11 reluctant to agree in a carte blanche. The United 12 States passport does and the driver's license does, 13 particularly on the age. And it does not -- it does not 14 list on the U.S. passport where you live, but assume -- 15 I assume that you -- that you would not be listed on the 16 voter rolls unless you had filed an affidavit and said 17 you were a citizen and said you reside at a certain 18 address and in a certain county.</p> <p>19 Q. So is it fair to say that the forms of ID do 20 not indicate full eligibility to register to vote?</p> <p>21 A. You know, I would look at it half full. I 22 would think that the forms of ID substantially show that 23 someone is eligible to vote.</p> <p>24 Q. But they do not --</p> <p>25 A. In all cases.</p>	<p style="text-align: right;">123</p> <p>1 did have a distinguishing feature on it as between U.S. 2 citizens and non-U.S. citizens or were they 3 indistinguishable at that time?</p> <p>4 A. What my memory is, that which I testified to 5 just a moment ago, that there were -- that there was a 6 separate driver's license form for people that were here 7 on visas, and I don't know if that included green cards, 8 permanent resident alien status or not, but there was -- 9 there was a different driver's license, and that changed 10 sometime later.</p> <p>11 Q. That was sub -- after Senate Bill 14 --</p> <p>12 A. Yes.</p> <p>13 Q. -- was enacted?</p> <p>14 A. Yes.</p> <p>15 MS. HALPERN: Have we gone the extra 15 16 minutes now?</p> <p>17 THE REPORTER: We're within one minute.</p> <p>18 MS. WESTFALL: I have one minute worth of 19 questions, Counsel. Bear with me. And we'll finish 20 this set of bullet points, then we can be complete and 21 have lunch.</p> <p>22 Q. (By Ms. Westfall) Do you know whether persons 23 who are mentally incapacitated can obtain a passport?</p> <p>24 A. Thank you, Counsel. You have given me a copy 25 of the -- of the voter application so that -- no, people</p>
<p style="text-align: right;">122</p> <p>1 Q. They do not perfectly show that you are 2 eligible --</p> <p>3 A. Perfectly?</p> <p>4 Q. -- under all -- under all -- under all criteria 5 to be eligible; is that right?</p> <p>6 A. They -- I'm not aware that a U.S. military ID 7 shows whether you're a citizen or not or eligible to 8 vote. It's been a long time since I looked at one. I 9 was in the military a long time ago.</p> <p>10 Q. So is it -- I guess in summary, is it fair to 11 say that presenting a form of photo ID allowed by Senate 12 Bill 14 does not prove that the cardholder is 13 necessarily eligible to vote in Texas?</p> <p>14 A. You're trying to put words in my mouth. What I 15 would say is that presenting the ID listed in Senate 16 Bill 14 is a substantial improvement towards the goals 17 that most people have, and that is to fight voter fraud, 18 because all of these four points will show who the 19 person is, divert voter fraud and to provide more 20 confidence in the election process and result in a 21 larger voter turnout. I do quickly agree with you that 22 Number 2, a military ID does not necessarily show 23 whether or not you're an eligible voter or not.</p> <p>24 Q. Do you recall whether at the time Senate Bill 25 14 was enacted that a driver license or personal ID card</p>	<p style="text-align: right;">124</p> <p>1 who have been judged to be totally mentally 2 incapacitated or partially mentally capacitated without 3 the right -- cannot vote.</p> <p>4 Q. Can they obtain a passport, to your knowledge?</p> <p>5 A. I don't know.</p> <p>6 Q. Do you know if they can obtain a personal ID 7 card?</p> <p>8 A. I don't know.</p> <p>9 Q. Do you know whether a Texan who is on a 10 probation for a felony conviction can lawfully possess a 11 driver license in Texas?</p> <p>12 A. I don't know. I know reading from Exhibit 16 13 that you can't vote.</p> <p>14 Q. Thank you.</p> <p>15 MS. WESTFALL: I think we should break on 16 that note.</p> <p>17 MS. HALPERN: All right.</p> <p>18 (Lunch recess from 12:44 to 1:55 p.m.)</p> <p>19 Q. (By Ms. Westfall) Before the lunch break, we 20 were discussing the types of IDs in Senate Bill 14. 21 Why did Senate Bill 14 not allow the use 22 of non-photo IDs?</p> <p>23 MR. HALPERN: Objection, legislative 24 privilege.</p> <p>25 A. Well, I think our intent was to model the bill</p>

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<p style="text-align: right;">125</p> <p>1 after the Indiana bill that had -- that had been cleared 2 by the U.S. Supreme Court, and the Georgia bill. 3 And just to go back on one question you 4 asked me before we broke for lunch. 5 The qualifications that are stated here in 6 the application to a county registrar to vote are those 7 things such as you have to reside in the county in which 8 you vote, you've got to be at least 18 years old, not 9 convicted of a felony, and you haven't been adjudicated 10 to be either totally mentally incapacitated or partially 11 mentally incapacitated. Those are all elements that we 12 haven't had in either 218, 3 -- 13 Q. (By Ms. Westfall) 362. 14 A. -- 362 or 14, but which we all understand are 15 common characteristics of the right to vote. 16 Q. So are -- is it -- I'm not sure I understood 17 what you just explained. Are you indicating that those 18 bills don't address all the eligibility requirements? 19 A. There are certain eligibility requirements that 20 I believe are commonly thought of to exist in addition 21 to the photo ID or the Voter ID. 22 Q. So photo ID, again though, is a requirement 23 when you come to the polls to show who you are? 24 A. That's right. 25 Q. And voter eligibility and registration</p>	<p style="text-align: right;">127</p> <p>1 made a representation that the Indiana bill had no 2 non-photo ID, and I don't remember as I sit here whether 3 or not Georgia bill included some or not. 4 But that general overview was what I 5 communicated, not only to Senator Fraser as a -- and I'm 6 not using the word correctly, but a "safe place to be" 7 in order to meet the Constitution of the United States 8 and make sure we increase voter turnout. 9 Q. Was it Senator Fraser who made the decision as 10 to which ID to include in Senate Bill 14? 11 A. You're going -- I'll be forced to speculate. I 12 don't remember exactly. 13 Q. Did anything occur, besides what you just 14 testified, that you had waited six years and you wanted 15 to model the bill after Georgia and Indian, was there 16 anything else that occurred between 2009 and 2011 that 17 made the use of non-photo ID an acceptable option in 18 2009 but not in 2011? 19 MR. HALPERN: Objection, no foundation, 20 misstates prior testimony. 21 Q. (By Ms. Westfall) You may answer. 22 A. The testimony on Senate Bill 362 in 2009, which 23 took some 24, 27 hours, was so extensive and I listened 24 to it so carefully and I had a chance after the hearing 25 to talk briefly, only ever so briefly, with the</p>
<p style="text-align: right;">126</p> <p>1 requirements are a different part of the election 2 process; is that correct? 3 A. I think that's what I'm saying, yes. 4 Q. Thank you. So I believe you just testified 5 that Senate Bill 14 did not allow the use of non-photo 6 ID because it was modeled on the Georgia and Indiana 7 photo ID laws, which also did not include photo ID? 8 MR. HALPERN: Did not include photo ID? 9 Q. (By Ms. Westfall) Did -- I'm sorry. Did not 10 include non-photo ID. 11 A. My conversations with Senator Fraser were that 12 since -- since we had started the process with 218 and 13 362, in the 2005, 2007 and 2009 sessions, and the 14 Democrats were, in the Texas Senate, were chubbing us, I 15 was having critical conversations with them in which 16 they would say one thing and then on the Floor they were 17 saying something else. In other words, saying that we 18 could work this out, we could reach an agreement. They 19 were voting against all our efforts, that I thought that 20 after all this effort, culminating six years of work, 21 that the only absolute that we had and the most logical 22 safe harbor for us was to model our legislation after 23 the Indiana bill, which had already been approved by the 24 U.S. Supreme Court and/or the Georgia bill. 25 As we sit here at this moment, you have</p>	<p style="text-align: right;">128</p> <p>1 Secretary of State's Office from -- from Indiana and 2 Georgia, but it was so replete with examples of both 3 registration fraud and in-person fraud, and the studies 4 we had undertaken, since there wasn't data available in 5 Texas, showed that in states with voter IDs, Indiana and 6 Georgia specifically, there was no decrease in minority 7 voting. As a matter of fact, there was an increase. 8 That based on all those factors put together, it looked 9 like the safest approach to have a bill that was 10 constitutional, protected all parties and yet increased 11 voter turnout, was to focus our legislation on the 12 Indiana and the Georgia models. 13 Q. Did you ever consider hiring any entity to 14 research how SB 14 and the requirements therein would 15 impact voters in the state of Texas? 16 MR. HALPERN: Objection, legislative 17 privilege. 18 A. I directed staff to make inquiries as to how to 19 determine -- let me reword this. 20 I instructed staffed to try and determine 21 what effect the bill would have. 22 Q. (By Ms. Westfall) On voters in Texas? 23 A. Yes. 24 Q. And was that inquiry or request on your part 25 directed to Mr. Hebert?</p>

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<p style="text-align: right;">129</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. Anyone else on your staff or just Mr. Hebert?</p> <p>3 <b>A. That's who I remember.</b></p> <p>4 Q. Did Mr. Hebert come back to you with any</p> <p>5 analysis pursuant to your request?</p> <p>6 MS. HALPERN: Objection, legislative</p> <p>7 privilege. Attorney-client privilege.</p> <p>8 I'll leave that one to you.</p> <p>9 Q. (By Ms. Westfall) Was he providing you with</p> <p>10 policy advice or --</p> <p>11 <b>A. Counsel, I'm referring -- no, Counsel, I'm</b></p> <p>12 <b>referring to -- I asked that Mr. Hebert -- and I may</b></p> <p>13 <b>have asked others -- but Mr. Hebert to look into what</b></p> <p>14 <b>effect a Senate Bill 14 would have on voters in Texas,</b></p> <p>15 <b>all voters, including minority voters. As I recall, he</b></p> <p>16 <b>undertook conversations and -- with the Secretary of</b></p> <p>17 <b>State's Office, with the DPS, and was frustrated at his</b></p> <p>18 <b>attempts because those two silos kept -- kept driver</b></p> <p>19 <b>license and kept registered voters separate, and -- and</b></p> <p>20 <b>it's been difficult to put them together.</b></p> <p>21 Q. Do you recall when you made the request to</p> <p>22 Mr. Hebert to conduct this investigation?</p> <p>23 <b>A. No.</b></p> <p>24 Q. Was it before the filing of Senate Bill 14 or</p> <p>25 after?</p>	<p style="text-align: right;">131</p> <p>1 to stop there.</p> <p>2 THE WITNESS: Okay.</p> <p>3 Q. (By Ms. Westfall) But just to clarify in the</p> <p>4 terms of the timing, do you believe that you made this</p> <p>5 inquiry of Mr. Hebert during --</p> <p>6 <b>A. During 2009 --</b></p> <p>7 Q. During 2009 or '11?</p> <p>8 <b>A. I'm sorry, during 2011.</b></p> <p>9 Q. Okay. Were you aware when you made that</p> <p>10 inquiry, that the Secretary of State has a list of</p> <p>11 Spanish surname registered voters that it maintains</p> <p>12 based on the last name of the voter?</p> <p>13 <b>A. I don't remember.</b></p> <p>14 Q. Put differently, did you have any recollection</p> <p>15 that the Secretary -- any awareness that the Secretary</p> <p>16 of State had a list of Hispanic voters?</p> <p>17 MR. HALPERN: Objection, misstates the</p> <p>18 evidence, mischaracterizes the evidence.</p> <p>19 Q. (By Ms. Westfall) You may answer.</p> <p>20 <b>A. I'm -- I don't remember whether I knew that or</b></p> <p>21 <b>not, although, logically, if you have a list of</b></p> <p>22 <b>registered voters, you can run a sort and see who -- who</b></p> <p>23 <b>are -- who have Spanish surnames.</b></p> <p>24 Q. And had you known that fact or had that</p> <p>25 inference in your head during consideration of photo ID</p>
<p style="text-align: right;">130</p> <p>1 <b>A. I don't remember, but I believe it was before</b></p> <p>2 <b>the passage of the bill.</b></p> <p>3 Q. Is it your recollection that he was not able to</p> <p>4 bring back any information to you because of the</p> <p>5 problems you just described about the separation of DPS</p> <p>6 and the Secretary of State's Office?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Did you press him further to get information</p> <p>9 about the number of registered voters without a driver</p> <p>10 license?</p> <p>11 MR. HALPERN: Objection.</p> <p>12 <b>A. I think I've already answered that, that it was</b></p> <p>13 <b>impossible to calculate at the time, was his report to</b></p> <p>14 <b>me.</b></p> <p>15 Q. (By Ms. Westfall) Was it your understanding</p> <p>16 that it was impossible to match the two databases,</p> <p>17 driver license and registered voters?</p> <p>18 <b>A. Yes. And the -- and the information was not</b></p> <p>19 <b>complete. As a matter of fact -- I may be wrong on</b></p> <p>20 <b>this, on when I discovered this, but recently another</b></p> <p>21 <b>two million driver's license records were found.</b></p> <p>22 MS. HALPERN: You're now getting into</p> <p>23 attorney-client communications --</p> <p>24 THE WITNESS: Okay.</p> <p>25 MS. HALPERN: So I'm going to instruct you</p>	<p style="text-align: right;">132</p> <p>1 legislation in Texas since 2005?</p> <p>2 MR. HALPERN: Objection, compound, asked</p> <p>3 and answered.</p> <p>4 Q. (By Ms. Westfall) You may answer.</p> <p>5 <b>A. I had known that to the extent that someone was</b></p> <p>6 <b>a registered voter that -- and it was on the Secretary</b></p> <p>7 <b>of State's rolls, that by running a sort, they could</b></p> <p>8 <b>come up with a list of Spanish surnames.</b></p> <p>9 <b>That didn't address the problem at all,</b></p> <p>10 <b>Counsel, because we didn't know whether every one of</b></p> <p>11 <b>them had multiple sources of photo ID or not, and we</b></p> <p>12 <b>couldn't cross -- marry, cross-compare the DPS list with</b></p> <p>13 <b>the Secretary of State's list, as I recall Mr. Hebert</b></p> <p>14 <b>shared with me.</b></p> <p>15 Q. And just putting aside that process of</p> <p>16 matching, though, I just want to ask you a question:</p> <p>17 When did you first know that you could sort the voter</p> <p>18 registration list by last name of the voter to identify</p> <p>19 Spanish surname voters?</p> <p>20 <b>A. It's logical.</b></p> <p>21 Q. Have you known that since you've been in your</p> <p>22 office as Lieutenant Governor?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. Do you know why Senate Bill 14 as introduced</p> <p>25 did not permit the use of employee photo IDs?</p>



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<p style="text-align: right;">133</p> <p>1 MR. HALPERN: Objection, calls for 2 speculation. 3 Q. (By Ms. Westfall) You may answer. 4 <b>A. I have to ask Senator Fraser.</b> 5 Q. So you do not know? 6 <b>A. No.</b> 7 Q. Given the difference between Senate Bill 362 8 and Senate Bill 14, is it fair to say that Senate Bill 9 14 was quite different from Senate Bill 362 in terms of 10 permissible forms of ID? 11 <b>A. As far as I understand, the difference between</b> 12 <b>Senate Bill 362 and Senate Bill 14 is that Senate Bill</b> 13 <b>362 had several non-photo IDs that were permissible,</b> 14 <b>Senate Bill 14 did not.</b> 15 Q. And that is -- that is a difference, is it not? 16 <b>A. That is a difference.</b> 17 Q. Aside -- 18 <b>A. Perhaps without materiality, but it is a</b> 19 <b>difference.</b> 20 Q. Why would you say it's not material difference? 21 <b>A. Because as I've said to you, Counsel, for four</b> 22 <b>or five or six times already, we have not been able to</b> 23 <b>find any example in other jurisdictions or in Texas, and</b> 24 <b>we've already run four elections here in Texas since</b> 25 <b>the, you know, the implementation of Senate Bill 14,</b></p>	<p style="text-align: right;">135</p> <p>1 Q. Are you referring to the Election 2 Identification Certificate? 3 <b>A. And the -- and -- yes, and the underlying cost</b> 4 <b>on a birth certificate.</b> 5 Q. We'll talk about that a little bit later in the 6 process. 7 <b>How did the exception for voters over the</b> 8 <b>age of 70 come to be included in Senate Bill 14 as it</b> 9 <b>was introduced?</b> 10 MS. HALPERN: Objection, calls for 11 speculation. 12 Q. (By Ms. Westfall) You may answer. 13 <b>A. It was due to my -- and you need to put a</b> 14 <b>legislative -- you need to object for legislative</b> 15 <b>purposes.</b> 16 MR. HALPERN: Okay. Objection, 17 legislative privilege. 18 <b>A. Because we're about to go in to it.</b> 19 <b>And that is for -- at this point in time</b> 20 <b>for the previous four years, I have been -- and the word</b> 21 <b>"negotiating" may be too formal of a word but certainly</b> 22 <b>talking, twisting arms among Republicans and principally</b> 23 <b>Democrats to find common ground to pass a Voter ID bill.</b> 24 <b>And as I've testified several times already, the</b> 25 <b>Democrats were telling me one thing in person and</b></p>
<p style="text-align: right;">134</p> <p>1 where people could not get ID. Now there may be 1 or 2 2 or 10 or 15, I don't know. But I'm not aware of anyone 3 that -- that hasn't had access to identification. 4 Again, there may be and few, but I'm not aware of it. 5 Q. Other than the attempted analysis that you just 6 testified to that you asked Mr. Hebert to conduct 7 between registered voters and people who had driver 8 licenses, were you aware of any other analysis of the 9 number of registered voters who possessed any of the 10 required IDs under Senate Bill 14? 11 <b>A. I'm not aware because that type of analysis was</b> 12 <b>difficult based upon the problems I described to you a</b> 13 <b>few minutes ago.</b> 14 Q. And are you aware of any analysis that 15 determine if minority -- other than what you just 16 testified to, to determine if minority voters would be 17 disproportionately less likely to possess the forms of 18 ID under Senate Bill 14? 19 MR. HALPERN: Objection, vague. 20 Q. (By Ms. Westfall) You may answer. 21 <b>A. To the extent that there are economically</b> 22 <b>disadvantaged eligible voters, there's bound to be a</b> 23 <b>subset of those voters who are minority voters. And</b> 24 <b>that's one of the reasons why I pushed for eliminating</b> 25 <b>the cost to obtain the ID required under Senate Bill 14.</b></p>	<p style="text-align: right;">136</p> <p>1 <b>something else when they were pontificating on the Floor</b> 2 <b>of the Senate. I was led to believe and was telling</b> 3 <b>Republicans as late as going into the 2009 session that</b> 4 <b>I thought we could work out a mutually agreeable bill,</b> 5 <b>but that turned not to be the case. I don't mean this</b> 6 <b>in any way a criticism other than it became, obviously,</b> 7 <b>to them, a wedge issue, and regardless of what they may</b> 8 <b>share with me as a friend, they could not publicly vote</b> 9 <b>for a Voter ID bill. And so that -- that frustration,</b> 10 <b>again, led me to recommend that we go to the only known</b> 11 <b>constitutional safe harbor we had, which was to model</b> 12 <b>Senate Bill 14 after the Indiana and Georgia bills.</b> 13 MS. HALPERN: Could we have the question 14 read back. 15 THE WITNESS: Yes. Because I think I 16 answered a differenet question, I'm embarrassed to say. 17 MS. HALPERN: (Laughing.) It's possible. 18 Well, why don't I simply -- why don't I simply -- 19 THE WITNESS: Why don't you read the 20 question back. 21 MS. HALPERN: Okay. 22 (Requested portion was read back by the 23 court reporter.) 24 MS. HALPERN: Okay. Would you like him to 25 answer that?</p>

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<p style="text-align: right;">137</p> <p>1 Q. (By Ms. Westfall) I would.</p> <p>2 A. It is substantially the same answer that I just</p> <p>3 gave. Over a four-plus year time period and in talking,</p> <p>4 if not negotiating with the Democrat Senators, one of</p> <p>5 the requests that they repeatedly made was, "How about</p> <p>6 Grandma?" In fact, Senator Mario Gallegos frequently</p> <p>7 talked in private with me and on the Floor about,</p> <p>8 "Grandmother doesn't have a driver's license." And so,</p> <p>9 trying to be responsive to that concern, I pushed for</p> <p>10 the exception of people -- I can't remember now whether</p> <p>11 it was over 75 or over 70.</p> <p>12 Q. Were you also pressed by bill opponents to</p> <p>13 include additional forms of ID or relief for racial</p> <p>14 minority voters?</p> <p>15 MS. HALPERN: Objection, vague.</p> <p>16 Q. (By Ms. Westfall) You may answer.</p> <p>17 A. You're going to have to help me on this,</p> <p>18 Counsel. What type of identification do you have in</p> <p>19 mind?</p> <p>20 Q. My question stands: Weren't you requested by</p> <p>21 bill opponents, relief and accommodations, to make sure</p> <p>22 that racial minorities would be able to have access to</p> <p>23 IDs and participate in elections?</p> <p>24 A. I don't know that it was worded quite like that</p> <p>25 to me, but -- but to be responsive to the public</p>	<p style="text-align: right;">139</p> <p>1 do things?</p> <p>2 A. Yes.</p> <p>3 Q. Don't statute sometimes provide rule-making</p> <p>4 authority or administrative authority to agencies so</p> <p>5 that they may do things and must do things?</p> <p>6 A. Sometimes, but it was unlikely -- but it was</p> <p>7 unlikely that Senator Fraser and David Dewhurst were</p> <p>8 going to be able to think through how to solve and</p> <p>9 eliminate the cost on the driver's license and -- and</p> <p>10 spend the time necessary to eliminate the cost behind</p> <p>11 the election identification card. So that is something</p> <p>12 that -- that the agencies were told just as the</p> <p>13 Secretary of State's Office was told and had agreed</p> <p>14 prior to -- I may be confusing again. I think I</p> <p>15 confused a little bit in earlier testimony 2009 and</p> <p>16 2011. But at some point in either 2009 or 2011, I</p> <p>17 remember the Secretary of State's Office agreed to spend</p> <p>18 up to \$2 million on voter identification and training.</p> <p>19 Q. Turning back to the filing of Senate Bill 14,</p> <p>20 was it initially filed in Received Bill Number 178?</p> <p>21 A. I believe that's right.</p> <p>22 Q. Did you request that Senator Fraser refile the</p> <p>23 bill in order to be assigned a lower bill number?</p> <p>24 A. Yes.</p> <p>25 MR. HALPERN: Objection, legislative</p>
<p style="text-align: right;">138</p> <p>1 testimony that I heard, not only in 2005 and 2007 and</p> <p>2 2009, we made an effort to -- to eliminate the cost on</p> <p>3 the underlying documents that were required in order to</p> <p>4 be able to vote.</p> <p>5 Q. That reduction in the cost of the underlying</p> <p>6 documents, that was not within the text of Senate Bill</p> <p>7 14, was it?</p> <p>8 A. It was not because, as we talked a few moments</p> <p>9 ago, and I hope I didn't sound like I was preaching, but</p> <p>10 in the Texas legislative example, we frequently don't</p> <p>11 spell out every single detail, but it was left to the</p> <p>12 implementing agencies to -- to reduce the cost, as was</p> <p>13 done by the Health and Human Services on the question of</p> <p>14 birth certificates and DPS on the cost behind the</p> <p>15 election identification card.</p> <p>16 Q. With regard to the -- actually, strike that.</p> <p>17 How does the Legislature ensure that the</p> <p>18 agencies will do what the Legislature wants the agencies</p> <p>19 to do as a general matter?</p> <p>20 A. The agencies are well advised to do what the</p> <p>21 Legislature wants them to do and what the leadership in</p> <p>22 the Legislature wants them to do because they're all</p> <p>23 subject to the next appropriation.</p> <p>24 Q. Don't you sometimes -- doesn't the Legislature</p> <p>25 sometimes put language in statutes directing agencies to</p>	<p style="text-align: right;">140</p> <p>1 privilege.</p> <p>2 Q. (By Ms. Westfall) What is the significance of a</p> <p>3 bill receiving a low bill number?</p> <p>4 A. The significance is that the rest of the</p> <p>5 Legislature knows that it's a priority bill for the</p> <p>6 Lieutenant Governor.</p> <p>7 Q. Does --</p> <p>8 A. Or in the case of the House, for the Speaker.</p> <p>9 Q. Does a lower bill number expedite consideration</p> <p>10 of the bill in any way except for putting members on</p> <p>11 notice that it's one of your priorities?</p> <p>12 A. No.</p> <p>13 Q. Are there other instances you can recall in</p> <p>14 which you have requested that a Senator refile a bill to</p> <p>15 receive a lower bill number?</p> <p>16 A. Yes, many times.</p> <p>17 Q. How often does that happen?</p> <p>18 A. One or two times a session. Perhaps a total of</p> <p>19 -- well, a number of times.</p> <p>20 Q. So one or two bills, typically, you'll ask the</p> <p>21 member to refile per session; is that correct?</p> <p>22 A. Memory serves -- if memory serves.</p> <p>23 MS. WESTFALL: Would you mark this.</p> <p>24 (Exhibit 17 marked for identification.)</p> <p>25 Q. (By Ms. Westfall) You've been handed what's</p>

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<p style="text-align: right;">141</p> <p>1 been marked as Exhibit 17. This has been designated and 2 produced in this litigation as highly confidential. It 3 is TX 00034. Do you recognize this document? 4 <b>A. I've not seen it before.</b> 5 Q. Do you see at the top right-hand corner, it's 6 labeled Draft 11-18-10? 7 <b>A. Yes.</b> 8 Q. Do you know whether someone in this -- in your 9 office drafted this? 10 <b>A. No.</b> 11 Q. Do you believe, looking at Exhibit 17, that 12 someone in your office drafted this? 13 <b>A. That calls for speculation on my part.</b> 14 Q. Would you -- in other words, you do not know 15 whether someone in your office drafted this? 16 <b>A. That is correct, otherwise, I would have said</b> 17 <b>someone in my office drafted it.</b> 18 Q. Does this document reflect, in your view, the 19 major legislation in the Senate, to be taken up in the 20 Senate in 2011? 21 <b>A. I'm sorry, I missed --</b> 22 Q. Does this reflect your legislative priorities 23 for the 2011 session? 24 <b>A. No.</b> 25 Q. Okay. You can put that aside.</p>	<p style="text-align: right;">143</p> <p>(Exhibit 18 marked for identification.) 2 Q. (By Ms. Westfall) You've been handed what's 3 been marked as Exhibit 18. This has been marked as 4 highly confidential. It is TX 0034442. Do you 5 recognize this document? 6 <b>A. No, I've never seen it before.</b> 7 Q. Are you aware that Noe Barrios was a staff 8 person to Senator Estes? 9 <b>A. No, but if you represent that, I'll take your</b> 10 <b>word for it.</b> 11 Q. I will represent that to you. 12 Sir, were you aware that Senator Estes had 13 concerns about Senate Bill 14's compliance with the 14 Voting Rights Act? 15 <b>A. No, I was not.</b> 16 Q. Had you heard of the concerns from any other 17 Senators who voted or supported Voter ID about Senate 18 Bill 14's compliance with the Voting Rights Act? 19 <b>A. I don't recall if there were any concerns from</b> 20 <b>Senators who had voted for Senate Bill 14 with its -- in</b> 21 <b>compliance with the Voting Rights Act.</b> 22 Q. Did Mr. Hebert ever share any of the contents 23 of this e-mail with you? 24 <b>A. I believe he talked with me on one or more</b> 25 <b>occasions about Roman Numeral I.</b></p>
<p style="text-align: right;">142</p> <p>1 Are you familiar with a staff person 2 named -- 3 <b>A. Some -- some but not all.</b> 4 Q. Okay. Turning back to Exhibit 17. Which ones, 5 can you recall, looking at Exhibit 17, which of your 6 major legislative priorities were not included on this 7 list? 8 <b>A. Senate Bill 7, Senate Bill 8.</b> 9 Q. What did those bills pertain to? 10 <b>A. Health care initiatives, which were an</b> 11 <b>alternative to Obamacare.</b> 12 Q. Did you agree that -- 13 <b>A. And --</b> 14 MS. HALPERN: Hang on. Hang on. 15 <b>A. And I had never -- I'd never used the words</b> 16 <b>"Virginia law on Obamacare" or "Arizona law on</b> 17 <b>immigration."</b> 18 Q. (By Ms. Westfall) Okay. Let's put this exhibit 19 aside. 20 Are you familiar with a staff person named 21 Noe Barrios? 22 <b>A. Can you refresh my memory who she worked for?</b> 23 Q. Certainly. 24 MS. WESTFALL: Could you mark this, 25 please.</p>	<p style="text-align: right;">144</p> <p>1 Q. Okay. Did he ever share with you the concerns 2 of Senator Estes? 3 <b>A. No, he didn't. And Senator Estes, to the</b> 4 <b>extent he had concerns, this was not an area that he</b> 5 <b>spent much time in. I don't -- I would have obviously</b> 6 <b>wanted to make sure that his concerns were allayed, but</b> 7 <b>this is not something that I personally got involved</b> 8 <b>in. Since this was not his field, if someone else that</b> 9 <b>had worked in this field had concerns, I would have</b> 10 <b>wanted to sit down and talk with them.</b> 11 Q. Did you request that the Governor designate the 12 issues of Voter ID as emergency legislation for 2011? 13 MR. HALPERN: Objection, deliberative 14 process, legislative privilege. 15 Go ahead and answer. 16 MS. WESTFALL: I would object to your 17 objection on the basis of deliberative process. I'm 18 asking the Lieutenant Governor in his capacity as his 19 legislative functions and responsibilities. 20 MS. HALPERN: And the deliberative process 21 privilege is that of Governor Perry. 22 MS. WESTFALL: I'm asking about the 23 Lieutenant Governor's request of the Governor and 24 whether he made that request, not anything about what 25 the Governor was thinking or contemplating.</p>

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<p style="text-align: right;">145</p> <p>1 MR. HALPERN: Well, but to the extent that 2 would inform what the Governor did, it could be part of 3 the Governor's deliberative process. It's a legitimate 4 objection. I'm going to let the witness answer under 5 seal. 6 MS. WESTFALL: Thank you. 7 MR. HALPERN: Yes or no. 8 <b>A. I don't remember. If I did, I'd be glad to</b> 9 <b>tell you I do, but I don't remember.</b> 10 MS. WESTFALL: Could you mark this. 11 (Exhibit 19 marked for identification.) 12 Q. (By Ms. Westfall) You've been handed what's 13 been marked Exhibit 19. And this document has been 14 produced as highly confidential. It's TX 00034561 15 through 62. Do you recognize this document? 16 <b>A. No. This is the first time I've seen it.</b> 17 Q. Where do you think it came from if it didn't 18 come from your office? 19 MR. HALPERN: Objection, misstates his 20 testimony. He said he has not seen it. 21 Q. (By Ms. Westfall) You may answer. 22 <b>A. If you -- if you give me a moment to look at it</b> 23 <b>carefully --</b> 24 Q. Sure. 25 <b>A. -- because I'm trying to determine whether it</b></p>	<p style="text-align: right;">147</p> <p>1 <b>would certainly agree that this document, Exhibit 19 as</b> 2 <b>it's written, contemplates that the Senate considers</b> 3 <b>Senate Bill 14 from 1:30 on Monday afternoon through</b> 4 <b>sometime on Wednesday, at which point it passes or could</b> 5 <b>pass.</b> 6 Q. Would you agree that this schedule sets a very 7 short period of time for consideration of a contested 8 bill like Senate Bill 14? 9 <b>A. No.</b> 10 Q. You don't? 11 <b>A. No, not at all. Just the contrary. Just</b> 12 <b>absolutely the contrary.</b> 13 Q. When has this happened before that a 14 substantive contested bill has been considered and 15 passed the Senate in the first -- within six days in 16 January? 17 <b>A. Well, but that wasn't your question. Your</b> 18 <b>question was this particular compression of time. And</b> 19 <b>the way that I -- as I answered your question, we have</b> 20 <b>-- we have, in the several cases where we've used a</b> 21 <b>Committee of the Whole, this process of having all your</b> 22 <b>testimony so all 31 members can hear it rather than just</b> 23 <b>-- than just half a dozen or so that attend the</b> 24 <b>Committee hearings, and then you move to pass it -- you</b> 25 <b>wait 24 hours and you bring the bill up -- has been done</b></p>
<p style="text-align: right;">146</p> <p>1 <b>may have come from my office or whether it came from</b> 2 <b>Senator Fraser's office.</b> 3 Q. Certainly. Take your time. 4 <b>A. Well, it could have come from my office. I</b> 5 <b>don't know that it came from my office and so I'm going</b> 6 <b>to have to just reply I don't know.</b> 7 Q. Okay. Do you see that in Exhibit 19, it sets a 8 timeline for consideration of Senate Bill 14 from 9 January 20, 2011, through passage, anticipated passage 10 on Wednesday, January 26, 2011? 11 MR. HALPERN: Objection, mischaracterizes 12 the document. 13 Q. (By Ms. Westfall) You may answer. 14 MS. HALPERN: The word "passage" is not on 15 here, Counsel. 16 Q. (By Ms. Westfall) Consideration. 17 <b>A. And I apologize, your question is?</b> 18 Q. Do you agree -- well, let me -- let me 19 withdraw. I will ask a different question. 20 Do you agree that the draft procedures for 21 consideration of Senate Bill 14 anticipated that the 22 Senate would consider it from a period of Thursday, 23 January 20th through Wednesday, January 26th? 24 <b>A. The term "considering" a bill is normally used</b> 25 <b>when the bill is put before them on the Floor. And so I</b></p>	<p style="text-align: right;">148</p> <p>1 <b>on the three or four occasions that we've talked about</b> 2 <b>earlier in the day.</b> 3 <b>But this would be pursuant to the</b> 4 <b>Senators' rule that permits the bill to be taken up on</b> 5 <b>the Floor and sometime 24 hours after it passes out of</b> 6 <b>the Committee of the Whole to be taken up on the Floor</b> 7 <b>of the Senate, and that's what we had discussed at some</b> 8 <b>length earlier today.</b> 9 <b>The only difference between this and other</b> 10 <b>measures that we discussed is that Senate Bill 14 was</b> 11 <b>put on as emergency legislation along with, I think,</b> 12 <b>eminent domain, and maybe one or two other bills, to be</b> 13 <b>taken up during those first 60 days where</b> 14 <b>constitutionally we cannot pass legislation unless the</b> 15 <b>Governor declares it to be an emergency.</b> 16 Q. Why was the schedule for consideration of 17 Senate Bill 14 set in this manner? 18 MR. HALPERN: Objection, legislative 19 privilege. 20 MR. BRISSENDEN: Objection, form. 21 Q. (By Ms. Westfall) You may answer. 22 <b>A. Because it's the most common sense approach.</b> 23 <b>The Governor puts four pieces of legislation -- or</b> 24 <b>three, I can't remember -- on an emergency call. We</b> 25 <b>designate when it's going to be brought up. And the</b></p>

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<p style="text-align: right;">149</p> <p>1 Senate rules say that 24 hours after you pass it out of 2 Committee of the Whole, you can -- you can consider the 3 bill, if I'm remember the special item correctly. And 4 that's simply what we did.</p> <p>5 The other -- the other pieces of 6 legislation had another day or two between them because 7 there wasn't the expedited 24-hour period between the 8 ending of the Committee of the Whole and being able to 9 bring the bill to the Floor. We're talking about 24 10 hours, we're not talking about weeks and weeks. It's 11 immaterial.</p> <p>12 Q. So put differently, the consideration of Senate 13 Bill 14 was similar to the other bills designated for 14 emergency consideration in 2011, of which there were two 15 or three?</p> <p>16 A. Yes. I believe -- I don't know if anyone can 17 help refresh my memory, but I believe that eminent 18 domain was on the emergency call, and I thought another 19 bill was.</p> <p>20 Q. Okay. Thank you. So it is your recollection 21 that the -- the other bills set for emergency 22 consideration were also considered and passed the Senate 23 in six days?</p> <p>24 A. No. That's your testimony. What I'm saying is 25 that those other bills were -- were timely, considered</p>	<p style="text-align: right;">151</p> <p>1 Points to the Senators on a conference call I made in 2 January 2011.</p> <p>3 Q. Do you recall seeing these Talking Points 4 before sitting here today?</p> <p>5 A. No.</p> <p>6 Q. Do you know who would have -- but you recognize 7 the content of the Talking Points; is that fair?</p> <p>8 A. Yes.</p> <p>9 Q. Do you know who in your office would have 10 drafted these Talking Points?</p> <p>11 A. I do not know at this point who specifically 12 drafted them.</p> <p>13 Q. Do you see that it's marked "Draft" at the top?</p> <p>14 A. Yes, I do.</p> <p>15 Q. Do you recall whether any changes were made to 16 the script after -- after this time?</p> <p>17 A. I do not remember.</p> <p>18 Q. Did you call members as indicated in this 19 Talking Point to advise them of the timing of Voter ID 20 legislation?</p> <p>21 A. The document would imply that I did. I don't 22 remember. There was a lot going on. Other pieces of 23 emergency legislation, lots of other bills. I don't 24 remember.</p> <p>25 Q. Do you agree with the content of the script?</p>
<p style="text-align: right;">150</p> <p>1 in Committee, and then moved to the Floor to pass. And 2 my testimony was that -- was that the -- instead of 3 taking it on the Floor 24 hours after it passed the 4 Committee of the Whole, they were taken up -- and I'm 5 trying to remember the rule right now. I normally have 6 to refresh myself during each session because I get busy 7 in so many other things. But I believe it's 48 hours. 8 It's either 48 or 72. But as quickly as we can, we try 9 to move the emergency bills through.</p> <p>10 Q. So Senate Bill 14 was considered in a -- in 11 24-hour time less than the other bills you just referred 12 to; is that the end result?</p> <p>13 A. The end result is either 24 or 48. I don't 14 remember whether in this point in the session we could 15 bring up a bill after it came out of Committee in 48 or 16 72 hours.</p> <p>17 MS. WESTFALL: Would you mark this. 18 (Exhibit 20 marked for identification.)</p> <p>19 Q. (By Ms. Westfall) You've been handed what's 20 been marked as Exhibit 20. Again produced in this 21 litigation as highly confidential. It is TX 00034560. 22 Do you recognize this document?</p> <p>23 A. If you will permit me to read it.</p> <p>24 Q. Certainly, certainly. Take your time.</p> <p>25 A. I believe this is a document with Talking</p>	<p style="text-align: right;">152</p> <p>1 A. "I intend for the Senate to meet as long as it 2 takes next week to get the job done," I think that's 3 very fair. "We have a lot of other very important work 4 ahead of us," which I just got through sharing with you. 5 "It's in the Senate's best interest to complete our work 6 on Voter ID so we can concentrate on the budget, eminent 7 domain, border security and other pressing --"</p> <p>8 THE COURT REPORTER: I'm sorry, I can't 9 follow --</p> <p>10 THE WITNESS: Excuse me.</p> <p>11 THE COURT REPORTER: -- that.</p> <p>12 A. "And I think it's in the Senate's best interest 13 to complete our work on Voter ID so we can concentrate 14 on the budget, eminent domain, border security and other 15 pressing issues." That's what I believed then, I 16 believe now, and I believe I -- in fact, I remember 17 testifying that I thought it was in our best interest to 18 move Voter ID earlier in the session in order to give it 19 a better chance to pass.</p> <p>20 Q. (By Ms. Westfall) Okay. When you indicated 21 here, "I've asked Senator Duncan and Senator Fraser to 22 move the bill as expeditiously as possible," is -- are 23 there any other reasons why you wanted to move the bill 24 as expeditiously as possible besides passing it quickly 25 and getting it to the House as quickly as possible?</p>



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<p style="text-align: right;">153</p> <p>1 A. No.</p> <p>2 Q. What did you mean when you said that the Senate</p> <p>3 would meet the following week and take as long as it</p> <p>4 took to get Voter ID done?</p> <p>5 A. Meaning that it's an important bill and that we</p> <p>6 would work on it on the Floor until we got it passed.</p> <p>7 Q. Was this the first piece of business -- first</p> <p>8 piece of legislation that the Senate was taking up in</p> <p>9 2011?</p> <p>10 A. I don't recall. I don't believe it was. I</p> <p>11 recall that the first bill I moved was not a bill but a</p> <p>12 resolution on the balanced budget amendment for the U.S.</p> <p>13 Congress. Revolutionary thought.</p> <p>14 Q. Why did you place -- other than what you just</p> <p>15 testified to, you wanted to get this bill quickly to the</p> <p>16 House, was there any reason why you placed a priority on</p> <p>17 passing Voter ID before some of these other items you</p> <p>18 mentioned in the Talking Points: The budget, eminent</p> <p>19 domain, border security, et cetera?</p> <p>20 MR. HALPERN: Objection, legislative</p> <p>21 privilege.</p> <p>22 A. Counsel, in my conversations with both</p> <p>23 Republicans and Democrats, they wanted to get this issue</p> <p>24 behind them and they thought it would be better that we</p> <p>25 address it early in the session and got on with all of</p>	<p style="text-align: right;">155</p> <p>1 that I believed we had an excellent chance of working</p> <p>2 together on a bipartisan basis.</p> <p>3 MR. HALPERN: Let me ask the reporter, I</p> <p>4 think we should be at another hour by now, am I right?</p> <p>5 Are we close to it?</p> <p>6 THE COURT REPORTER: About 7 minutes</p> <p>7 short.</p> <p>8 MS. HALPERN: Okay. We'll keep going a</p> <p>9 little longer.</p> <p>10 Q. (BY MS. WESTFALL) Did the Senate adopt a</p> <p>11 similar rule in 2011, that it had adopted in 2009,</p> <p>12 related to the consideration of Voter ID legislation?</p> <p>13 A. You mean the special item we talked about?</p> <p>14 Q. Yes.</p> <p>15 A. Yes.</p> <p>16 MS. WESTFALL: Could you mark this?</p> <p>17 (Exhibit 21 marked for identification.)</p> <p>18 Q. (By Ms. Westfall) You've been handed what's</p> <p>19 been marked as Exhibit 21. It's produced in this</p> <p>20 litigation as highly confidential. It's TX</p> <p>21 00034565. When you've had a chance to look at it, could</p> <p>22 you let me know.</p> <p>23 A. Yes.</p> <p>24 Q. Do you recognize this document?</p> <p>25 A. I do not recognize it.</p>
<p style="text-align: right;">154</p> <p>1 our other work, and that came from conversations with</p> <p>2 Republicans and Democrats.</p> <p>3 Q. (By Ms. Westfall) Is it true that Democrats did</p> <p>4 have concerns about the expedited consideration of</p> <p>5 Senate Bill 14, notwithstanding what you just testified</p> <p>6 to?</p> <p>7 A. I know that certain Democrat Senators raised</p> <p>8 concerns, but keep in mind that -- that they raised</p> <p>9 concerns about anything involving this bill. And I</p> <p>10 viewed it as simply a delaying or measure, because from</p> <p>11 my conversation with the Democrat Senators who had</p> <p>12 talked to me over the period, at this point, four years,</p> <p>13 five years, about trying to work together, this was a</p> <p>14 wedge issue that the Democrats were not going to agree</p> <p>15 to regardless of the fact, again, that the -- a super</p> <p>16 majority of Texas voters, Anglo, African-American and</p> <p>17 Hispanic, according to polls, were in favor of a Voter</p> <p>18 ID.</p> <p>19 Q. Why did you think that it was in the Senate's</p> <p>20 best interest to complete work on Voter ID before</p> <p>21 focusing on these other issues?</p> <p>22 MR. HALPERN: Asked and answered.</p> <p>23 Q. (By Ms. Westfall) You may answer.</p> <p>24 A. Because I wanted to put this issue behind us so</p> <p>25 we wouldn't have a spill-over on other issues that --</p>	<p style="text-align: right;">156</p> <p>1 Q. Do you think it likely was produced by your</p> <p>2 office?</p> <p>3 MR. HALPERN: Objection, calls for</p> <p>4 speculation.</p> <p>5 Q. (By Ms. Westfall) You may answer.</p> <p>6 A. Normally, this type of a memo to the members</p> <p>7 was generated by the bill sponsor, because -- because</p> <p>8 the first and second paragraph show a personal</p> <p>9 preference on how handle the amendments. So</p> <p>10 traditionally, that would fall within the purview the</p> <p>11 bill sponsor.</p> <p>12 Q. Can you explain what this Exhibit 21 intends to</p> <p>13 convey and the effect?</p> <p>14 MS. HALPERN: Objection, calls for</p> <p>15 speculation.</p> <p>16 Q. (By Ms. Westfall) You may answer.</p> <p>17 MR. HALPERN: Objection, no foundation.</p> <p>18 A. Well, if I understand your question correctly,</p> <p>19 you're asking me what this means?</p> <p>20 Q. (By Ms. Westfall) Yes.</p> <p>21 MR. HALPERN: Objection, calls for</p> <p>22 speculation.</p> <p>23 Q. (By Ms. Westfall) You may answer.</p> <p>24 A. The document says what it says. It says that</p> <p>25 -- so that I don't have to speculate, what it's asking</p>

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<p style="text-align: right;">157</p> <p>1 of members is that the amendments filed on that day, 2 which I presume -- again, I'm speculating even though I 3 said I'm not. I'm assuming that it was that Monday. 4 All amendments filed in the Committee of the Whole will 5 be held over until the next day, Tuesday, for 6 consideration by the full Senate on second reading. The 7 second reading occurs after you have moved to suspend 8 the regular order of business. 9 Second paragraph says that -- that in 10 order to make it easier, that the -- whoever wrote this 11 said we're going to use the introduced copy of the bill 12 rather than the Committee printing, so that you could -- 13 so that you don't have to go back and add page and line 14 number changes to consider the current amendment. So it 15 made it easier on the members. This was apparently, to 16 me -- and I'm not speculating because that's the only 17 purpose, to make it easier on accepting amendments. 18 Q. Did it facilitate expediting consideration of 19 Senate Bill 14? 20 MR. HALPERN: Objection -- 21 Q. (By Ms. Westfall) By avoiding the need to 22 reprint copies of the bill and make technical 23 corrections to lines and pages? 24 A. Possibly. 25 MS. WESTFALL: Could you mark this.</p>	<p style="text-align: right;">159</p> <p>1 recollection? 2 A. I -- I don't remember whether it was an 3 adequate quote or not but it could have been. 4 Q. Do you believe that Voter ID and getting Senate 5 Bill 14 enacted was a bloodbath? 6 A. It may have been slightly an over-dramatic 7 statement. No, I don't believe it was bloodbath. It 8 was a long process over six years. But I -- I admit I 9 was talking to a partisan crowd. 10 Q. What did you mean by saying it was a bloodbath, 11 we had to change the rules? 12 A. Well, I addressed the first part of that. The 13 second part of that is that the Senators, in order to 14 bring it up during regular session, as compared to a 15 special session, they would have had to change the 16 rules. But by bringing it up in regular session, 17 that -- the rule -- the Senators had to change their 18 rules. 19 Q. Did you mean to suggest by that statement that 20 you -- that the Senate had to take some fairly drastic 21 measures? 22 MS. HALPERN: Objection. 23 Q. (By Ms. Westfall) You may answer. 24 MS. HALPERN: Assumes facts not in 25 evidence.</p>
<p style="text-align: right;">158</p> <p>1 (Exhibit 22 marked for identification.) 2 Q. (By Ms. Westfall) You've been handed what's 3 been marked as Exhibit 22. Do you recognize this 4 document? 5 A. No. 6 Q. Do you see that this an article entitled 7 Dewhurst On Hot Seat in Houston Debate, dated September 8 16, 2013? 9 A. Yes. 10 Q. Do you see at the bottom of the second page, 11 there is a quote from you regarding Voter ID? 12 MS. HALPERN: I'm sorry, Counsel, where on 13 the bottom of this? 14 THE WITNESS: It's the second page over. 15 (Soto voce discussion.) 16 Q. (By Ms. Westfall) Did you find that quote, sir? 17 A. I did. 18 Q. Did you have a chance to review it? 19 A. I did. 20 Q. Is it -- is it -- were you quoted about Voter 21 ID as telling the crowd you think, "That was easy. That 22 was a bloodbath. We had to change the rules. We had to 23 fight the Democrats"? Do you see that quote? 24 A. I do. 25 Q. Was that an adequate quote, to the best of your</p>	<p style="text-align: right;">160</p> <p>1 A. The -- not at all. The history of the Senate 2 is replete -- excuse me, the legislative history of the 3 Texas Senate is replete with the example after example, 4 since World War II, of Lieutenant Governors abandoning 5 the two-thirds rule during regular session to pass bills 6 they wanted to pass and then putting bills back in to 7 recreate the two-thirds rule. This was attempt by the 8 Senators to do just that. 9 After -- at that point, four years, and 10 with the majority, as I've testified, according to the 11 third-party polling, Anglo, African-American and 12 Hispanic voters in favor of Voter ID, this was a way 13 that they could pass the bill, which the majority of the 14 voters in the state of Texas wanted to see passed. 15 Q. What is the basis of your knowledge that 16 Lieutenant Governors throughout the years changed the 17 two-thirds rule? 18 A. The Senate Journal. 19 Q. I believe you testified earlier in this 20 deposition that you were unaware of any rules that had a 21 carve-out by type of legislation for the two-thirds 22 rule; is that not -- is that not accurate? 23 A. That is accurate but it's totally inconsistent 24 and has nothing to do with my previous statement. 25 Q. Okay. Can you explain --</p>

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<p style="text-align: right;">161</p> <p>1 <b>A. Sure.</b></p> <p>2 Q. -- how the two are reconciled?</p> <p>3 <b>A. Yeah, let me explain how. You asked me earlier</b></p> <p>4 <b>if there had been another special item that I'm aware of</b></p> <p>5 <b>that's been put into the Senators' rules, and I'm not</b></p> <p>6 <b>aware of any. There may have been other special items.</b></p> <p>7 <b>There may have been a number of special items in the</b></p> <p>8 <b>past. I'm just simply not advised.</b></p> <p>9 Now, but the Journal that I have examined</p> <p>10 carefully for over the last 30 or 40 years has numerous</p> <p>11 cases where Lieutenant Governors, not just myself, but</p> <p>12 others, Bob Bullock, Bill Hobby, passed the Blocker</p> <p>13 Bill, meaning there was no bill in front, there was no</p> <p>14 requirement to suspend the rules in order to -- or to</p> <p>15 suspend the rules in order to move a bill forward -- had</p> <p>16 done that many times.</p> <p>17 Q. Was that the method used with regard to Senate</p> <p>18 Bill 14?</p> <p>19 <b>A. No.</b></p> <p>20 Q. Was that embodied in the Senate rules?</p> <p>21 <b>A. No. But it was a practice that was used to</b></p> <p>22 <b>pass bills the Lieutenant Governor wanted to and where a</b></p> <p>23 <b>small minority did not want to pass it.</b></p> <p>24 MS. HALPERN: We're at an hour now,</p> <p>25 surely. How much more do you have? Are you within</p>	<p style="text-align: right;">163</p> <p>1 Q. (By Ms. Westfall) You may answer.</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Do you see where it refers to measures required</p> <p>4 to offset burdens on voters?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Do you see that it indicates that availability</p> <p>7 of provisional ballots and absentee ballots is required</p> <p>8 to offset burdens on voters?</p> <p>9 <b>A. Well, it's not necessarily required, but I see</b></p> <p>10 <b>that here it says, "measures required," and it includes</b></p> <p>11 <b>"availability of provisional ballots and absentee</b></p> <p>12 <b>ballots,"</b></p> <p>13 Q. Do you believe that the availability of</p> <p>14 provisional ballots and absentee ballots is not required</p> <p>15 to offset burdens on voters to comply with the Supreme</p> <p>16 Court?</p> <p>17 MS. HALPERN: Objection, calls for a legal</p> <p>18 conclusion.</p> <p>19 Q. (By Ms. Westfall) You may answer.</p> <p>20 <b>A. I don't know whether it does or not. I know</b></p> <p>21 <b>that Senate Bill 14 provides for a provisional ballot</b></p> <p>22 <b>and allows absentee ballots.</b></p> <p>23 Q. Do you recall whether Senate Bill 14 changed</p> <p>24 the law at all with regard to absentee ballots?</p> <p>25 <b>A. No, I don't know whether it changed the law as</b></p>
<p style="text-align: right;">162</p> <p>1 spitting distance of quitting?</p> <p>2 MS. WESTFALL: No.</p> <p>3 MS. HALPERN: Let's take a break.</p> <p>4 (Recess 2:55 p.m. to 3:15 p.m.)</p> <p>5 (Exhibit 23 marked for identification.)</p> <p>6 Q. (By Ms. Westfall) You've been handed what's</p> <p>7 been marked as Exhibit 23. This has been produced in</p> <p>8 this litigation as highly confidential. It is</p> <p>9 TX00262645 through 262649. If you could take a look at</p> <p>10 this e-mail and attachments and let me know when you've</p> <p>11 had a chance to glance at them.</p> <p>12 <b>A. I've looked at this.</b></p> <p>13 Q. Do you recognize Exhibit 23?</p> <p>14 <b>A. No.</b></p> <p>15 Q. Have you ever seen any of the attachments</p> <p>16 included in Exhibit 23?</p> <p>17 <b>A. No.</b></p> <p>18 Q. Do you see that the e-mail on the cover is from</p> <p>19 Bryan Hebert to several staff and copying Mr. Brunson</p> <p>20 and Ms. Rathgaber?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Did you ever discuss ensuring compliance with</p> <p>23 Supreme Court with Mr. Hebert?</p> <p>24 MS. HALPERN: Objection, asked and</p> <p>25 answered.</p>	<p style="text-align: right;">164</p> <p>1 <b>concerned -- as concerns absentee ballots.</b></p> <p>2 Q. To your knowledge, did it increase availability</p> <p>3 of absentee ballots or maintain the status quo?</p> <p>4 <b>A. I don't know.</b></p> <p>5 Q. Do you know under Senate Bill 14 what would</p> <p>6 happen to a voter who appeared to vote in person without</p> <p>7 appropriate photo ID?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. What would happen?</p> <p>10 <b>A. They would submit a provisional ballot and then</b></p> <p>11 <b>six days to return with acceptable ID in order for the</b></p> <p>12 <b>election authorities to count that provisional ballot.</b></p> <p>13 Q. Did this require -- did Senate Bill 14 require</p> <p>14 those voters to make a trip to the election office to</p> <p>15 bring an ID in order to ensure the ballot would be</p> <p>16 counted?</p> <p>17 <b>A. Yes. Is that inconsistent with what I just</b></p> <p>18 <b>said?</b></p> <p>19 Q. No, I just wanted to confirm my</p> <p>20 understanding --</p> <p>21 <b>A. That it would require the voter who filed a</b></p> <p>22 <b>provisional ballot to go wherever was necessary, do that</b></p> <p>23 <b>which is necessary to provide -- to obtain an acceptable</b></p> <p>24 <b>ID pursuant to Senate Bill 14 and then return back and</b></p> <p>25 <b>present that ID.</b></p>

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<p style="text-align: right;">165</p> <p>1 Q. Do you recall earlier in this deposition you</p> <p>2 testified about the previous provisional ballot</p> <p>3 procedures for voters without ID?</p> <p>4 A. Yes.</p> <p>5 Q. What were those procedures?</p> <p>6 A. Under the previous -- under the previous</p> <p>7 legislation, provisional ballots were counted if there</p> <p>8 were -- were not -- were -- strike that.</p> <p>9 Under the previous legislation, if someone</p> <p>10 did not have the proper identification, they could vote</p> <p>11 using a provisional ballot, and it would count if they</p> <p>12 signed an affidavit, and then it was left up to the</p> <p>13 county registrar board to -- to hopefully compare</p> <p>14 signatures and see if it was a valid ballot.</p> <p>15 Q. So is it fair to say that Senate Bill 14, with</p> <p>16 regard to provisional ballots, would require a voter to</p> <p>17 make a second trip?</p> <p>18 A. Yes.</p> <p>19 Q. Do you see under Roman II, it indicates</p> <p>20 "Measures required to offset burdens on voters," and it</p> <p>21 says, "Ensure that obtaining ID is no more inconvenient</p> <p>22 or burdensome than the usual act of voting"?</p> <p>23 A. Yes.</p> <p>24 Q. Do you believe that was a requirement to ensure</p> <p>25 compliance for the Supreme Court?</p>	<p style="text-align: right;">167</p> <p>1 Q. So at the time that SB 14 was under</p> <p>2 consideration, was an applicant -- in the bill that was</p> <p>3 introduced, Senate Bill 14, it provided personal ID --</p> <p>4 personal state ID for voters who indicated they did not</p> <p>5 have qualifying Senate Bill 14 IDs; isn't that right?</p> <p>6 A. Could you repeat that?</p> <p>7 Q. Certainly. In the bill, Senate Bill 14, as</p> <p>8 introduced, provided for a personal state ID for voters</p> <p>9 who indicated they did not have qualifying Senate Bill</p> <p>10 14 ID?</p> <p>11 A. Would you permit me to look at Exhibit 15 for a</p> <p>12 second?</p> <p>13 Q. Certainly.</p> <p>14 A. No, that is not correct. What I have before me</p> <p>15 in Exhibit 15, I thought we had gone over this, as</p> <p>16 introduced, well, at least that's my memory that this</p> <p>17 bill was introduced in exhibit -- and it's my memory</p> <p>18 that Exhibit 15 represents Senate Bill 14 as introduced.</p> <p>19 It either has a driver's license or a personal</p> <p>20 identification card issued by the Department of Public</p> <p>21 Safety, a U.S. military ID, a U.S. citizenship</p> <p>22 certificate or U.S. passport.</p> <p>23 Q. Yes. And I think I'm not being sufficiently</p> <p>24 clear on my question. My question is whether -- if you</p> <p>25 -- Senate Bill 14, as introduced, if you didn't have any</p>
<p style="text-align: right;">166</p> <p>1 A. No.</p> <p>2 Q. Do you believe that Senate Bill 14 endeavored</p> <p>3 to ensure that obtaining ID was no more inconvenient or</p> <p>4 burdensome than voting?</p> <p>5 A. Yes.</p> <p>6 Q. And how did it do that?</p> <p>7 A. How did it not --</p> <p>8 Q. How did it -- how did it make obtaining ID no</p> <p>9 more inconvenient or burdensome than the act of voting?</p> <p>10 A. In an effort to combat fraud and reduce the</p> <p>11 number of fraudulent voters, whether it's in-person</p> <p>12 voting, mail-in or registration, a process was started</p> <p>13 to pass legislation which would have reduced in-person</p> <p>14 fraud, and I tried to include a registration fraud, but</p> <p>15 that was taken off because of the one -- the one-subject</p> <p>16 rule -- the two-subject rule. And -- and that</p> <p>17 requirement to prove who you are has not changed. And</p> <p>18 efforts were made through the regulatory process in</p> <p>19 order to make the ID that was required in order to vote</p> <p>20 free, or as nearly free as possible, and to ease the</p> <p>21 time that it took a person to obtain that documentation.</p> <p>22 As I recall, it was reduced down to two days by</p> <p>23 regulation or statute, so that it was no more</p> <p>24 inconvenient or burdensome than the normal act of</p> <p>25 voting. Understanding that a voting ID was introduced.</p>	<p style="text-align: right;">168</p> <p>1 of the necessary forms of photo ID, it provided that DPS</p> <p>2 would issue you a personal state ID if you said you</p> <p>3 didn't have any of those other forms of ID; isn't that</p> <p>4 right?</p> <p>5 A. Yes.</p> <p>6 Q. And my question is whether -- and the Election</p> <p>7 Identification Certificate was substituted for that</p> <p>8 provision in conference; isn't that correct?</p> <p>9 A. And what was substituted in conference?</p> <p>10 Q. Election Identification Certificate, otherwise</p> <p>11 known as EIC?</p> <p>12 A. I believe that's right, yes.</p> <p>13 Q. At the time that Senate Bill 14 was introduced,</p> <p>14 was an applicant for a personal state ID required to</p> <p>15 present documentary proof of citizenship?</p> <p>16 A. At the time that Senate Bill 14 was introduced</p> <p>17 was -- under then current law, did one have to present</p> <p>18 documentary proof of being an eligible voter?</p> <p>19 Q. Of citizenship to get a personal ID, not to</p> <p>20 register to vote, to get a personnel ID?</p> <p>21 A. I don't know. A personal ID issued by the</p> <p>22 Department of Public Safety, I don't know.</p> <p>23 Q. Was documentary proof of citizenship required</p> <p>24 to register to vote at that time?</p> <p>25 A. The identification required at the time that</p>

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<p style="text-align: right;">169</p> <p>1 <b>Senate Bill 14 was introduced did not all require proof</b> 2 <b>of citizenship.</b> 3 Q. So register to vote; is that correct? 4 <b>A. To register to vote.</b> 5 Q. Was -- at the time Senate Bill 14 was 6 considered, was an applicant for a personal state ID 7 required to provide a set of fingerprints, to your 8 knowledge? 9 <b>A. I don't know.</b> 10 Q. Do you know whether many voters are able to 11 walk to their voting precinct to vote? 12 <b>A. Those that live near their voting precinct can.</b> 13 <b>Those that are in rural areas have to drive some</b> 14 <b>distance.</b> 15 Q. Do you know whether many voters must drive to a 16 driver license office, in other words, they're not 17 accessible by walking? 18 MS. HALPERN: Objection, vague. 19 Q. (By Ms. Westfall) You may answer. 20 <b>A. I would have to speculate, but I would imagine</b> 21 <b>that a number of people have to drive.</b> 22 MS. WESTFALL: Would you mark this? 23 (Exhibit 24 marked for identification.) 24 Q. (By Ms. Westfall) You've been handed what's 25 been marked as Exhibit 24 and produced as highly</p>	<p style="text-align: right;">171</p> <p>1 <b>A. No.</b> 2 Q. (By Ms. Westfall) Do you know whether any 3 changes were made to Senate Bill 14 to reflect some of 4 these concerns about preclearance expressed in Exhibit 5 24? 6 <b>A. I don't think they were, because I believe I</b> 7 <b>didn't agree with this position, nor did Senator Fraser.</b> 8 Q. Were you aware of Mr. Hebert's position, or is 9 this separate and apart from Mr. Hebert's e-mail? 10 <b>A. That's separate and apart from his e-mail.</b> 11 Q. What was the basis of your belief that Senate 12 Bill 14 would be precleared? 13 <b>A. Because it was modeled substantially after the</b> 14 <b>Indiana law which had been approved by the U.S. Supreme</b> 15 <b>Court and also modeled after the Georgia bill.</b> 16 Q. To your knowledge, was the Indiana photo ID 17 bill, was there any consideration of Section 5 of the 18 Voting Rights Act in that litigation? 19 <b>A. No. And I beg your pardon. I was focused more</b> 20 <b>on -- on the ultimate constitutionality of the bill.</b> 21 Q. Were you -- you were concerned about the 22 constitutionality of -- 23 <b>A. In other words, what I was saying is that --</b> 24 <b>and not being a lawyer, that I can truthfully say I'm</b> 25 <b>not a lawyer -- that -- that I historically looked at</b></p>
<p style="text-align: right;">170</p> <p>1 confidential. It's TX00262650 through 52. Would you 2 take a look at this document and all pages and let me 3 know if you've seen it before. 4 <b>A. I looked at the document.</b> 5 Q. Do you recognize this document? 6 <b>A. No.</b> 7 Q. Do you see that on the front page, it is an 8 e-mail from Bryan Hebert to other Senate staff, 9 including Janice McCoy, copying Blaine Brunson and Julia 10 Rathgaber? 11 <b>A. Yes.</b> 12 Q. Do you see that he expresses in the e-mail that 13 he is doubtful that -- doubtful about the photo ID law 14 being precleared? 15 <b>A. I see where he wrote that.</b> 16 Q. And do you see this e-mail is dated Saturday, 17 January 22nd? 18 <b>A. I do.</b> 19 Q. Was that days before the Committee of the 20 Whole's consideration of Senate Bill 14? 21 <b>A. Yes.</b> 22 Q. Did Mr. Hebert ever express to you his concerns 23 about preclearance of Senate Bill 14? 24 MS. HALPERN: Objection, legislative 25 privilege. Objection, attorney-client privilege.</p>	<p style="text-align: right;">172</p> <p>1 <b>this as to how do we write a bill that fights fraud and</b> 2 <b>proves integrity of the election process so that more</b> 3 <b>people vote and that absolutely meets all the</b> 4 <b>constitutional test and would be approved by the U.S.</b> 5 <b>Supreme Court if we had to appeal it all the way to the</b> 6 <b>Supreme Court. And that's why I kept relying on the</b> 7 <b>only two pieces of legislation that I know have been</b> 8 <b>approved by the Indiana law, by the U.S. Supreme Court</b> 9 <b>and the Georgia law was precleared by the DOJ.</b> 10 Q. Okay. So is it -- because -- although -- is it 11 your testimony that the Indiana photo ID law did not 12 involve a claim of race discrimination, it involved a 13 challenge of the U.S. Constitution; is that correct? 14 <b>A. Could you ask your question again? I'm not</b> 15 <b>following.</b> 16 Q. Sure. Was the Indiana photo ID law, did it 17 withstand challenge under the U.S. Constitution? 18 <b>A. Yes.</b> 19 Q. And that was not a claim of race 20 discrimination; is that correct? 21 <b>A. If you make that representation, I will accept</b> 22 <b>it.</b> 23 Q. And is it your testimony that you thought 24 Senate Bill 14 would withstand or would be precleared 25 because the Georgia photo ID law had been precleared by</p>



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<p style="text-align: right;">173</p> <p>1 the Department of Justice?</p> <p>2 <b>A. Yes, and because in my entire experience,</b></p> <p>3 <b>Counsel, my entire life with this bill, which seems like</b></p> <p>4 <b>longer than six years, I have never heard one person use</b></p> <p>5 <b>race discrimination as a reason for passing this bill.</b></p> <p>6 <b>And I have -- I have always wanted to increase the</b></p> <p>7 <b>number of voters, whether they're Hispanic, African</b></p> <p>8 <b>American or Anglo.</b></p> <p>9 Q. Were you present in the Committee of the</p> <p>10 Whole's consideration of Senate Bill 14?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. And I believe you testified earlier that you</p> <p>13 voted in favor of Senate Bill 14 in the Committee of the</p> <p>14 Whole?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. But you were not able to vote on Floor</p> <p>17 consideration of Senate Bill 14; is that correct?</p> <p>18 <b>A. I think what I testified was that I don't</b></p> <p>19 <b>remember voting, but I'm sure I did. We could look that</b></p> <p>20 <b>up very quickly. I can't imagine I wouldn't have voted</b></p> <p>21 <b>for it.</b></p> <p>22 Q. In the Committee of the Whole or the Floor?</p> <p>23 <b>A. In the Committee of the Whole.</b></p> <p>24 Q. Where are the records of the Committee of the</p> <p>25 Whole recorded? Are they in the Senate Journal or</p>	<p style="text-align: right;">175</p> <p>1 <b>just --</b></p> <p>2 MS. WESTFALL: Could you mark this?</p> <p>3 (Exhibit 26 marked for identification.)</p> <p>4 <b>A. She knew what I was saying.</b></p> <p>5 Q. (By Ms. Westfall) I was able to do the math.</p> <p>6 You've been handed what's been marked as</p> <p>7 Exhibit 26.</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Do you recognize this document?</p> <p>10 <b>A. Looks to be a transcript of proceedings before</b></p> <p>11 <b>the Senate on January 25th when we were in the Committee</b></p> <p>12 <b>of the Whole.</b></p> <p>13 Q. I will represent to you that this is an excerpt</p> <p>14 and not -- excuse me, not the entire transcript of the</p> <p>15 entire committee hearing. I want to turn your attention</p> <p>16 to Page 44 of the transcript, an exchange between</p> <p>17 Senator Van de Putte and Senator Fraser. Do you see</p> <p>18 that at the bottom of page 44, Senator Van de Putte asks</p> <p>19 whether studies have been done to determine whether,</p> <p>20 under current Texas voters law, any impact it would</p> <p>21 have, the bill would have on classes of Latino and</p> <p>22 African American voters?</p> <p>23 <b>A. I'm looking to find that part. Where are you,</b></p> <p>24 <b>on Page 44 or 45?</b></p> <p>25 Q. Page 44, line 24, at the bottom.</p>
<p style="text-align: right;">174</p> <p>1 elsewhere?</p> <p>2 <b>A. They would be on the -- if we have a</b></p> <p>3 <b>legislative history of 14. Let's see. We have a</b></p> <p>4 <b>legislative history of 362, but that we wouldn't have</b></p> <p>5 <b>the individual votes except on the -- unless we looked</b></p> <p>6 <b>at the Journal.</b></p> <p>7 Q. While you're looking, let's go ahead and mark</p> <p>8 another exhibit.</p> <p>9 (Exhibit 25 marked for identification.)</p> <p>10 Q. (By Ms. Westfall) Sir, you've been handed</p> <p>11 what's been marked as Exhibit 25. Do you recognize this</p> <p>12 document?</p> <p>13 <b>A. It purports to be the Texas Legislative Online</b></p> <p>14 <b>History, the legislative history of Senate Bill 14.</b></p> <p>15 <b>This enables me to be able to respond to</b></p> <p>16 <b>your earlier question. I voted for -- for Senate Bill</b></p> <p>17 <b>362 as a member of the Committee of the Whole in 2009,</b></p> <p>18 <b>and I voted for Senate Bill 14 as a member of the</b></p> <p>19 <b>Committee of the Whole in -- in 2011. Because as you</b></p> <p>20 <b>can see from one of the categories at the bottom, it</b></p> <p>21 <b>says, "Vote: Ayes 20, Nays 12." And that means at that</b></p> <p>22 <b>time in 2011, we had 21 members -- we had 20 Republicans</b></p> <p>23 <b>and I voted for it.</b></p> <p>24 Q. Thank you.</p> <p>25 <b>A. I didn't mean to trail off in saying that. I</b></p>	<p style="text-align: right;">176</p> <p>1 <b>A. At the very bottom.</b></p> <p>2 Q. At the very bottom, yes, sir.</p> <p>3 <b>A. Yes, I see that.</b></p> <p>4 Q. Do you see Senator Van de Putte asks whether</p> <p>5 there were any studies that determined the impact that</p> <p>6 the law, that the bill, Senate Bill 14 would have on</p> <p>7 Latino and African American voters?</p> <p>8 <b>A. I see that in the transcript.</b></p> <p>9 Q. And do you see that Senator Fraser on Page 45</p> <p>10 responds that the bill he's laying out has been approved</p> <p>11 by the U.S. Supreme Court and precleared by the</p> <p>12 Department of Justice in Georgia, it will deter fraud,</p> <p>13 et cetera?</p> <p>14 <b>A. I see that exchange.</b></p> <p>15 Q. Did you believe that Senator Fraser's response</p> <p>16 to Senator Van de Putte was -- responded to her</p> <p>17 question?</p> <p>18 MR. BRISSENDEN: Objection, form.</p> <p>19 Q. (By Ms. Westfall) You may answer.</p> <p>20 MS. HALPERN: Objection, relevance.</p> <p>21 Q. (By Ms. Westfall) You may answer.</p> <p>22 <b>A. I think I've answered this question two or</b></p> <p>23 <b>three times, and that is, I had asked my staff,</b></p> <p>24 <b>principally, Mr. Hebert, to look into just this issue.</b></p> <p>25 <b>He'd had conversations with the -- both the DPS and the</b></p>

<p style="text-align: right;">177</p> <p>1 Secretary of State's Office, and we were not able to</p> <p>2 pull up the data that would give an indication. And so</p> <p>3 we had to rely on -- on authoritative results coming out</p> <p>4 of both Indiana, who had photo voter ID, and Georgia,</p> <p>5 who had photo voter ID, that it did not diminish</p> <p>6 minority voter turnout, but actually increased it in the</p> <p>7 -- I believe it's three studies that we found that</p> <p>8 had been -- that had carefully looked at this in other</p> <p>9 states, showed the same outcome.</p> <p>10 Q. But tuning my attention back -- turning your</p> <p>11 attention back to my question, I'm not asking you about</p> <p>12 the merits of Senator Fraser's response, but whether it</p> <p>13 was responsive to her question or whether it responded</p> <p>14 to a different question?</p> <p>15 MR. BRISSENDEN: Same objection.</p> <p>16 Q. (By Ms. Westfall) You may answer.</p> <p>17 A. Well, I think my answer to you was more</p> <p>18 specific than Senator Fraser's was.</p> <p>19 Q. Turning your attention to Page 162 of the</p> <p>20 transcript, and 163. Starting at 162, Line 17.</p> <p>21 A. Yes.</p> <p>22 Q. If you could just read the question of Senator</p> <p>23 West and then the response of Senator Fraser and let me</p> <p>24 know when you've had a chance to review that.</p> <p>25 A. Yes, I've read it.</p>	<p style="text-align: right;">179</p> <p>1 opinion.</p> <p>2 Q. (By Ms. Westfall) You may answer.</p> <p>3 A. Certainly in part.</p> <p>4 Q. How did that --</p> <p>5 A. Certainly in part.</p> <p>6 Q. How was that responsive in your view?</p> <p>7 A. In that if the super majority of the people of</p> <p>8 the state of Texas who happened to be -- and the</p> <p>9 question was racial minorities -- African American,</p> <p>10 Hispanic or other, were in favor of a voter ID, then</p> <p>11 that's in part responsive. But -- but partly based upon</p> <p>12 the studies that were done in 2008 and 2009, and partly</p> <p>13 now that we have a history here in Texas of having</p> <p>14 implemented Senate Bill 14, we see that in 2008 and</p> <p>15 2009, as well as in 2013 and 2014, there are no problems</p> <p>16 with the difficulty. I say no. I'm not aware of</p> <p>17 problems of difficulty in obtaining the necessary photo</p> <p>18 voter ID that's required under Senate Bill 4. And</p> <p>19 certainly, that was all the testimony and empirical data</p> <p>20 that we had seen from studies and from examining the</p> <p>21 results of the Indiana photo voter ID as passed in 2008</p> <p>22 and 2009, and the same with Georgia.</p> <p>23 Q. Do you recall during debate on the 2009 bill,</p> <p>24 Senate Bill 362, that there was testimony by</p> <p>25 representatives from the Brennan Center about ID</p>
<p style="text-align: right;">178</p> <p>1 Q. Do you see that Senator West asked about</p> <p>2 research conducted on the burdens of photo ID</p> <p>3 requirements and whether they fall disproportionately on</p> <p>4 racial minorities?</p> <p>5 A. Yes.</p> <p>6 Q. Do you see that? And do you see that Senator</p> <p>7 Fraser responded with information about polls,</p> <p>8 concerning support for -- polls in support of</p> <p>9 identification requirements?</p> <p>10 A. Yes.</p> <p>11 Q. Do you -- why -- why do you think that Senator</p> <p>12 Fraser responded with polling data to that question?</p> <p>13 MS. HALPERN: Objection, calls for</p> <p>14 speculation.</p> <p>15 Q. (By Ms. Westfall) You may answer.</p> <p>16 A. I have no idea why Senator Fraser responded</p> <p>17 that way. I have no way to opine on why Senator Fraser</p> <p>18 responded the way he did to the previous question.</p> <p>19 Other --</p> <p>20 Q. Did you believe -- go ahead, I'm sorry.</p> <p>21 A. I'm sorry, go ahead.</p> <p>22 Q. Did you believe that -- that Senator Fraser's</p> <p>23 response was -- that information was responsive to</p> <p>24 Senator West's question?</p> <p>25 MS. HALPERN: Objection, calls for a legal</p>	<p style="text-align: right;">180</p> <p>1 possession by Black and Hispanic voters?</p> <p>2 A. I'm afraid -- if you could differentiate it</p> <p>3 just slightly more. When you hear over 24 hours' worth</p> <p>4 of testimony, it's hard to remember exactly.</p> <p>5 Q. Do you recall testimony by either a Mr. Justin</p> <p>6 Levitt or Adam Skaggs from the Brennan Center about ID</p> <p>7 possession of photo IDs by racial minorities?</p> <p>8 A. No, no, I don't.</p> <p>9 Q. Do you know anything about the Brennan Center?</p> <p>10 A. No, I don't.</p> <p>11 Q. I will represent to you that they testified</p> <p>12 during this very lengthy hearing for --</p> <p>13 A. I believe you.</p> <p>14 Q. -- Senate Bill 362 --</p> <p>15 A. I believe you.</p> <p>16 Q. -- about disparate impact of ID by minority</p> <p>17 voters?</p> <p>18 A. At the same time, we've seen that -- at least</p> <p>19 I've seen testimony that some 95 percent of our voters</p> <p>20 have driver's license. I'm in the process of checking</p> <p>21 that number, but a very high percentage of all of our</p> <p>22 drivers -- I'm sorry, of all our voters have driver's</p> <p>23 license.</p> <p>24 Q. Turning back to -- I think we got a little bit</p> <p>25 sidetracked. Turning back to the exchange, do you</p>

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<p style="text-align: right;">181</p> <p>1 believe that based on what -- that Senator Fraser's 2 response was responsive to Senator West? 3 MS. HALPERN: Objection, relevance. 4 Q. (By Ms. Westfall) You may answer. 5 MS. HALPERN: Objection, calls for a legal 6 conclusion. 7 <b>A. Well, Senator West asked, quote, unquote, was</b> 8 <b>there any research conducted on the burdens of photo ID</b> 9 <b>requirements that may fall disproportionately on racial</b> 10 <b>minorities. I think the answer is no, based upon</b> 11 <b>research, but I'm not sure that Senator Fraser addressed</b> 12 <b>that question.</b> 13 Q. Thank you, sir. You can put away this large 14 exhibit. 15 Do you recall that during the Senate's 16 consideration of Voter ID as to Senate Bill 14, there 17 were requests for information about the racial 18 composition of Texas voters who did not possess a driver 19 license? 20 <b>A. I'm sorry, I'm going to ask you one more time</b> 21 <b>to repeat that.</b> 22 Q. Let me strike that. Let me withdraw that 23 question. 24 During consideration of Senate Bill 14, 25 was there a request from -- of the Secretary of State</p>	<p style="text-align: right;">183</p> <p>1 <b>Section 5 state, Georgia, and another state, Indiana.</b> 2 Q. Do you think it was appropriate for Senator 3 Williams to seek this information from the Secretary of 4 State's Office? 5 <b>A. Sure.</b> 6 MR. BRISSENDEN: Objection, form. 7 Q. (By Ms. Westfall) Do you think it was -- 8 <b>A. I'm sorry?</b> 9 MS. HALPERN: He's objecting to the form 10 of the question. 11 Q. (By Ms. Westfall) Do you think it was 12 advisable for Senator Williams to seek this information? 13 <b>A. I have no problem with him asking.</b> 14 Q. Do you agree that it's desirable for Senators 15 to have information about a bill's effects before the 16 Senate passes the bill? 17 MS. HALPERN: Objection, legislative 18 privilege, calls for speculation, relevance. 19 Q. (By Ms. Westfall) You may answer. 20 <b>A. Well, my answer is going to be that based upon</b> 21 <b>all of the data that was available to us at the time</b> 22 <b>that we had looked into whether there was a burden,</b> 23 <b>decided that there was not a -- a burden that would, in</b> 24 <b>fact, be a problem and a hindrance to voting. And from</b> 25 <b>all the empirical data that I've seen, as I mentioned,</b></p>
<p style="text-align: right;">182</p> <p>1 for registered voters without a driver license? 2 <b>A. I believe there was. Are you representing that</b> 3 <b>there was?</b> 4 Q. I was just trying to understand your memory 5 sitting here today. Do you recall that Senator Williams 6 made such a request on the Senate Floor? 7 <b>A. You refreshed my memory. Yes, I do. Yes, I</b> 8 <b>do.</b> 9 Q. Do you recall that Ann McGeehan testified as a 10 resource witness at the hearing on Senate Bill 14? 11 <b>A. Yes, I do.</b> 12 Q. Do you recall that Senator Williams twice 13 during her testimony said when are you going to get me 14 the data comparing the registered voters and who have 15 driver's licenses? Do you recall that? 16 <b>A. Yes.</b> 17 MR. BRISSENDEN: Objection, form. 18 Q. (By Ms. Westfall) Thank you. 19 <b>A. Which -- which is -- which is consistent with</b> 20 <b>what I've said to you several times today in that our</b> 21 <b>attempts to -- to investigate any alleged burden or --</b> 22 <b>or difficulty on the part of minority voters to get</b> 23 <b>acceptable photo voter ID was difficult to get the</b> 24 <b>information. That's why we had to rely on -- on</b> 25 <b>national studies and the actual example in another</b></p>	<p style="text-align: right;">184</p> <p>1 <b>as I mentioned repeatedly, the three national studies,</b> 2 <b>Indiana, Georgia, and our experience over the last four</b> 3 <b>elections, is that there's -- there is not an apparent</b> 4 <b>problem that I'm aware of with the access to the -- to</b> 5 <b>the photo voter ID so that anyone who wants, including</b> 6 <b>economically disadvantaged minority populations can</b> 7 <b>obtain that ID and vote.</b> 8 Q. Just to clarify the record, it is true that 9 information about how SB 14 was implemented during the 10 past several elections in 2013 and 2014 was not 11 available to the Texas Legislature when they were 12 considering Senate Bill 14 in 2011; is that right? 13 <b>A. Yes. How Senate Bill 14 was implemented in the</b> 14 <b>subsequent four -- four elections was not available to</b> 15 <b>us as we were considering -- all we could consider was</b> 16 <b>the data coming out of Indiana and another Section 5</b> 17 <b>preclearance state, Georgia, and three national studies.</b> 18 Q. Are you aware, other than Senator Williams' 19 request of Ann McGeehan for this information, of any 20 other Senator making a request for similar information 21 from the Secretary of State's office? 22 <b>A. I'm not advised.</b> 23 Q. Are you aware -- 24 <b>A. Normally you wouldn't have to ask, you wouldn't</b> 25 <b>have to have multiple Senators to ask. So if he asked,</b></p>

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<p style="text-align: right;">185</p> <p>1 <b>it should be sufficient.</b></p> <p>2 Q. Are you aware of whether the Secretary of</p> <p>3 State's office responded to Senator Williams' request</p> <p>4 for the number of voters without a driver license or a</p> <p>5 personal ID card?</p> <p>6 <b>A. I assume they did, but I don't know for a fact.</b></p> <p>7 Q. Do you know if your -- and why do you assume</p> <p>8 that they did?</p> <p>9 <b>A. Because the agencies are -- are well-advised to</b></p> <p>10 <b>be responsive to all the members of the Legislature,</b></p> <p>11 <b>including but not limited to the senior -- a senior</b></p> <p>12 <b>Senator who was -- in 2011, then the Secretary of the</b></p> <p>13 <b>Chair of our Transportation and Homeland Security</b></p> <p>14 <b>Committee.</b></p> <p>15 Q. Do you think it would be unusual for the</p> <p>16 Secretary of State not to provide that information upon</p> <p>17 request?</p> <p>18 <b>A. If they had it, I would -- I would expect them</b></p> <p>19 <b>to provide.</b></p> <p>20 Q. Did your office, to your knowledge, ever</p> <p>21 receive any such analysis from the Secretary of State's</p> <p>22 Office?</p> <p>23 <b>A. Would have to ask Bryan Hebert, but I'm not</b></p> <p>24 <b>advised on that.</b></p> <p>25 Q. Did you learn at any time during consideration</p>	<p style="text-align: right;">187</p> <p>1 Q. Was that Mr. Hebert or someone else in your</p> <p>2 office?</p> <p>3 <b>A. I don't remember.</b></p> <p>4 Q. Did you learn that before Senate Bill 14 was</p> <p>5 passed by the Senate?</p> <p>6 <b>A. I believe I did.</b></p> <p>7 Q. By small, did you learn -- what do you mean by</p> <p>8 small?</p> <p>9 <b>A. 3 to 7 percent.</b></p> <p>10 Q. Do you know how that estimate was derived?</p> <p>11 <b>A. I was told that there was approximately 1</b></p> <p>12 <b>million registered voters who didn't have driver's</b></p> <p>13 <b>license, and the math flows from there.</b></p> <p>14 Q. Did you learn any estimate of those number of</p> <p>15 voters who were Hispanic surnamed?</p> <p>16 <b>A. I don't remember.</b></p> <p>17 Q. Did you learn any racial breakdown at all, the</p> <p>18 African American voters?</p> <p>19 <b>A. I don't remember. But again, my</b></p> <p>20 <b>overwhelming -- the data in front of me showed that</b></p> <p>21 <b>there was no diminution of the or reduction in the</b></p> <p>22 <b>number of Hispanic or African American voters in both</b></p> <p>23 <b>Indiana and another Section 5 state, Georgia, and the</b></p> <p>24 <b>three studies that we relied on also indicated the same</b></p> <p>25 <b>thing after studying other jurisdictions.</b></p>
<p style="text-align: right;">186</p> <p>1 of Senate Bill 14 the number of registered voters</p> <p>2 without a driver license or personal ID card?</p> <p>3 MS. HALPERN: Objection, assumes facts not</p> <p>4 in evidence, misstates prior testimony.</p> <p>5 Q. (By Ms. Westfall) You may answer.</p> <p>6 MS. WESTFALL: Are you done? Sorry. Are</p> <p>7 you done?</p> <p>8 MS. HALPERN: Oh, what were you --</p> <p>9 MS. WESTFALL: He's not objecting.</p> <p>10 MS. HALPERN: I'll stick with assumes</p> <p>11 facts not in evidence, misstates testimony of prior</p> <p>12 witnesses in this case, misstates documentary evidence.</p> <p>13 Q. (By Ms. Westfall) Did you learn at any time</p> <p>14 during the consideration of Senate Bill 14 the number of</p> <p>15 registered voters without a driver license or personal</p> <p>16 ID card?</p> <p>17 <b>A. I was told that it was a small number, but I</b></p> <p>18 <b>don't recall the exact number.</b></p> <p>19 Q. Do you recall who told you that?</p> <p>20 <b>A. Staff.</b></p> <p>21 Q. Your staff?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Was that during consideration of Senate Bill</p> <p>24 14?</p> <p>25 <b>A. I don't remember.</b></p>	<p style="text-align: right;">188</p> <p>1 Q. Do you recall receiving analysis of the number</p> <p>2 of voters who had registered to vote without listing a</p> <p>3 driver license number?</p> <p>4 <b>A. I don't recall seeing that.</b></p> <p>5 Q. Was that unrelated to what you just testified</p> <p>6 to?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Are you aware of whether Senator Williams --</p> <p>9 actually, strike that.</p> <p>10 MS. WESTFALL: Could you please mark this?</p> <p>11 (Exhibit 27 marked for identification.)</p> <p>12 Q. (By Ms. Westfall) You've been handed what's</p> <p>13 been marked as Exhibit 27. It is TX00107733 through 35.</p> <p>14 Could you just take a look at this document and let me</p> <p>15 know when you've had a chance to review it?</p> <p>16 <b>A. Well, for a guy that's been busy doing a lot of</b></p> <p>17 <b>other things the last three years, the number I gave you</b></p> <p>18 <b>was pretty close. And you're looking anywhere from 4</b></p> <p>19 <b>to -- 4 to 7 percent.</b></p> <p>20 Q. Do you recognize this document or any of the</p> <p>21 numbers contained herein?</p> <p>22 <b>A. No, I've never seen it before.</b></p> <p>23 Q. Did this -- did you receive any of this</p> <p>24 information in an oral form from anyone?</p> <p>25 <b>A. I must have been because the information I just</b></p>

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<p style="text-align: right;">189</p> <p>1 shared with you that I was briefed that -- that up to 2 but not quite a million people. And this is showing a 3 number between 650 and 700 -- 650,000 and 730,000, well, 4 anywhere between 519- and 844,000. But do not have -- 5 do not have -- well, let me just go with the conclusion. 6 Between 678,000 and 844,000 of the 12.6 million voters 7 in -- on January 27, 2011, don't have a Texas driver's 8 license or an ID. That number is roughly 5 percent. 9 Q. So you believe based on looking at Exhibit 27 10 that you received information in a different form of 11 these findings? 12 A. I believe I received -- it would be my 13 assumption that what I was briefed by staff prior to -- 14 prior to or simultaneous with the passing of Senate Bill 15 14, that there was some 3 to 7 percent of the voters in 16 Texas who didn't have Texas driver's license is in fact 17 what this statement says. So. Now, it has -- it is my 18 belief that that number has been dramatically reduced 19 through the efforts that we've implemented through the 20 regulatory agencies, DPS and Health and Human Services. 21 Q. Okay. And just because I just want you to 22 focus on the legislative process and what -- what 23 occurred during that process, what was your 24 understanding of how these estimates were arrived at? 25 A. I was not briefed on that. This is the first</p>	<p style="text-align: right;">191</p> <p>1 to make that at no cost. 2 Q. And just turning your attention back to the 3 Legislature's consideration of Senate Bill 14. When you 4 got that information from Mr. Hebert that 3 to 7 percent 5 of voters did not have a driver license, did you ask him 6 at that time whether there could be an analysis of the 7 voters with Spanish surnames to respond to the concerns 8 of bill opponents that Senate Bill 14 would have an 9 adverse impact on minority voters? 10 A. No, I did not, because based on the examples in 11 Indiana, which is a different state than Texas, but 12 based upon the preclearance of the Georgia photo voter 13 ID and the national studies, I did not believe that 14 there was a -- that a photo voter ID -- ID bill would 15 reduce the minority voters, but it in fact would -- 16 would generate just the opposite effect, increase 17 voting. 18 Q. Did you believe that it was not necessary to 19 make that inquiry with regard to Texas voters because of 20 the information in the other states? 21 A. Yes. 22 Q. And why was that? 23 MS. HALPERN: Objection, asked and 24 answered. 25 Q. (By Ms. Westfall) You may answer.</p>
<p style="text-align: right;">190</p> <p>1 time I'm looking at the document that goes into more 2 detail, other than the -- than the raw numbers, less 3 than a million out of almost 13 million voters. 4 Q. And when you learned prior to -- I believe you 5 just testified prior to or during the Senate's 6 consideration of Senate Bill 14, did you understand that 7 that information had been derived from a match or 8 comparison of registered voters with people with driver 9 license, so two different databases? 10 A. I know that earlier on that -- that Mr. Hebert 11 was told that they were having difficulty in taking the 12 list of driver's licenses in the DPS silo and the number 13 of registered voters and names in the Secretary of 14 State's Office and matching them. I don't understand 15 why, but I was told that. And Mr. Hebert was told that 16 by -- by -- I believe the person that sent this e-mail. 17 And then I remember that sometime shortly thereafter, I 18 was told there was less than a million people that 19 didn't have a driver's license out of the universe of 20 12.6, by that time, slightly more. It looks -- let's 21 call it 13 million, and that's a little -- that's 22 roughly 5 percent of the voters. And I know efforts 23 have been made to -- to facilitate Election 24 Identification Cards and that those that want to 25 provide -- that they're going after birth certificates</p>	<p style="text-align: right;">192</p> <p>1 A. I think I've said this four or five times. 2 Q. I'm just trying to understand why you felt that 3 the information, since you had been provided by 4 Mr. Hebert -- 5 A. Right. 6 Q. -- a universe of persons, Texas -- actual Texas 7 voters without the ID -- 8 A. Right. 9 Q. -- why you wouldn't want to investigate the 10 racial breakdown of those voters and why you relied upon 11 data in other states? That's what I'm -- simply what 12 I'm trying to ask you. 13 A. If the universe of voters is 3 to 7 percent, 14 let's say, on average, 5 percent. Then some -- some -- 15 some percentage of that universe would be minority 16 voters. And I felt that in light of the -- the efforts 17 which we were -- I had already communicated with Senator 18 Fraser on -- on making this a no cost to people that 19 want to obtain photo voter ID, that the agencies, DPS 20 and Health and Human Services, would implement what we 21 wanted, and they did. And therefore, the -- that was 22 not going to be a problem. A driver's license was not 23 the only form of identification that was required under 24 Senate Bill 14. Senate Bill 14 did provide for free 25 identification. It didn't make any difference. All you</p>



<p style="text-align: right;">193</p> <p>1 had to do was apply and get an Election Identification 2 Card. And so I didn't feel like, at that point, knowing 3 that they having problems marrying the databases and 4 knowing that there was a continuing problem with -- with 5 accessing the data, that it would be worth the time 6 spent, since I didn't believe it was going to be at that 7 point in time in 2011 productive.</p> <p>8 Q. Did you believe that the racial composition of 9 the voters in Texas was similar to the racial 10 composition of the voters in Indiana and in Georgia?</p> <p>11 A. Not in Indiana, although Indiana has a higher 12 percentage of minority voters than I had anticipated, 13 based upon the testimony from the Secretary of State's 14 Office, a large African American and increasing Hispanic 15 population in the carried area and others. I thought 16 our population, not so much from a Hispanic point of 17 view, but from African American, was not totally 18 dissimilar in Georgia. And based upon that, I felt that 19 the information in front of us clearly indicated that 20 there was not a risk of any discrimination against any 21 groups. As a matter of fact, my goal from day one has 22 been to increase turnout. I happen to be one of the 23 biggest critics of Republicans and Democrats for not 24 doing everything possible to increase voter turnout. I 25 think it's healthy for democracy. End of speech. But I</p>	<p style="text-align: right;">195</p> <p>1 time I looked, 25 mobile registration vans to move into 2 areas to increase registration. I happen to believe 3 it's healthy, whether you're a Democrat or Republican, 4 to increase overall voter turnout.</p> <p>5 Q. And sir, I appreciate your testimony. I want 6 to draw your attention back to the legislative process 7 and whether steps were taken during the pendency in 8 consideration of Senate Bill 14 to identify where those 9 voters were located.</p> <p>10 A. As I said, in my conversations with the DPS, 11 they had a general idea of where most of your population 12 was from, that was minority, that could be serviced from 13 their different driver's license stations. And they 14 felt that by expanding those stations and by expanding 15 the hours of service, that they would access people that 16 needed free ID.</p> <p>17 Q. When did you have those conversations with DPS?</p> <p>18 A. During the pendency of Senate Bill 14 and 19 afterwards.</p> <p>20 Q. Did you --</p> <p>21 A. That's why you saw 25 new vans appropriated. 22 That's why you saw appropriations being made to expand 23 the Texas driver's license departments around the state.</p> <p>24 Q. And did those appropriations occur in the 2013 25 Legislature?</p>
<p style="text-align: right;">194</p> <p>1 really believe that.</p> <p>2 Q. Do you think it would have been -- putting 3 aside the Hispanic surname analysis, with regard to the 4 3 to 7 percent of voters without driver license, did you 5 conduct any investigation of where those voters resided 6 or any information about them whatsoever?</p> <p>7 A. I don't believe so.</p> <p>8 Q. Do you think it would have been helpful to 9 target efforts towards, for example, locating driver 10 license offices or implementing the EICs in the manner 11 in which you've testified to know more information about 12 where these voters resided?</p> <p>13 A. Yes, and we generally knew where they resided.</p> <p>14 Q. How?</p> <p>15 A. We knew -- because we have voter records, and I 16 talked to the DPS on several occasions about expanding 17 our hours, growing the -- increasing the size of our 18 driver's license departments, so we could -- so we could 19 handle more driver's license, both -- more driver's 20 applications and the new increase in Election 21 Identification Cards. And the DPS has been responsive. 22 They have enlarged, based upon the appropriation that I 23 made for them last year, a number of their locations. 24 They have changed their hours to include Saturdays in a 25 number of their locations. They have added, the last</p>	<p style="text-align: right;">196</p> <p>1 A. That's right.</p> <p>2 Q. Okay. Well, we'll talk about those a little 3 bit later. Did you circulate to bill supporters written 4 recommendations on how to vote on certain amendments?</p> <p>5 A. No.</p> <p>6 Q. Did you otherwise convey your recommendations 7 on amendments to members?</p> <p>8 A. No. There were a number of amendments that I 9 thought ought to be taken, but you need to keep in mind 10 -- well. You don't need to keep in mind anything. I 11 would recommend that -- that we discuss for a moment 12 that there's a general feeling among a lot of the 13 Republicans when they saw in the amendments a number of 14 the provisions that had been included in House Bill 218 15 and Senate Bill 362, that it confirmed what I shared 16 with you before, that this was all a stall game, and 17 there was no interest on the part of the Democrat 18 members to vote for a bill in any form.</p> <p>19 Q. Okay. And I appreciate your testimony, but 20 we're just going to focus now on -- on the --</p> <p>21 MS. HALPERN: Actually, this is probably a 22 good time for a break. Are we at another hour?</p> <p>23 THE REPORTER: Four minutes away.</p> <p>24 MS. HALPERN: Let's stop.</p> <p>25 MS. WESTFALL: Okay, we're doing great.</p>

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<p style="text-align: right;">197</p> <p>1 We're off the record. 2 (Recess from 4:10 to 4:30 p.m.) 3 (Exhibit 28 marked for identification.) 4 Q. (By Ms. Westfall) You've been handed what's 5 been marked as Exhibit 174. Do you recognize this 6 document? 7 THE REPORTER: Exhibit 28. 8 MS. WESTFALL: I'm looking at a different 9 exhibit sticker. My apologies. 10 Q. (By Ms. Westfall) You've been handed what has 11 been marked as Exhibit 28. Do you recognize this 12 document? 13 <b>A. It looks like the Senate Journal from Wednesday</b> 14 <b>26, 2011.</b> 15 Q. Were you on the Floor for consideration of the 16 amendments to Senate Bill 14 in the Senate? 17 <b>A. Let me turn in Exhibit 28 to that part. Yes.</b> 18 Q. Do you recall that Senator Davis offered an 19 amendment, Amendment Number 12, which would have 20 prohibited state agencies from charging a fee for 21 issuing documents used to obtain a photo ID, such as a 22 birth certificate, and that was Amendment 12 on Page 23 118? 24 <b>A. Yes.</b> 25 Q. Are you aware that under Indiana's photo ID</p>	<p style="text-align: right;">199</p> <p>1 <b>amendments may have been going so fast, that although I</b> 2 <b>don't have a problem with that particular amendment, and</b> 3 <b>that is, in fact, one of the amendments that we, in</b> 4 <b>fact, carried out -- in essence carried out, the</b> 5 <b>practical effect of which, it -- it was not approved</b> 6 <b>that night, although we have implemented it in a</b> 7 <b>practical sense, since that time.</b> 8 Q. Thank you. 9 And do you see Senator Davis also offered 10 Floor Amendment Number 15 at Page 120, which would have 11 allowed the use of IDs that had expired after the last 12 general election, in other words, up to two years 13 previously? 14 MS. HALPERN: Are you asking about 15 Amendment 15, Counsel? 16 MS. WESTFALL: Yes. 17 MR. HALPERN: The one that was withdrawn? 18 MS. WESTFALL: Yes. 19 MR. HALPERN: Okay. 20 <b>A. Yes, I see Amendment 15.</b> 21 Q. (By Ms. Westfall) Are you aware that the 22 Indiana photo ID law contains the same provision? 23 <b>A. Yes.</b> 24 Q. Was this -- did Senator Davis temporarily 25 withdraw and then make an amendment again to allow the</p>
<p style="text-align: right;">198</p> <p>1 law, indigent persons can obtain the underlying 2 documents to obtain a necessary photo ID free of charge? 3 <b>A. No.</b> 4 Q. You're not aware that that -- of that part of 5 the Indiana photo ID law? 6 <b>A. That's correct.</b> 7 Q. And was Amendment Number 12 tabled by the 8 Senate? 9 <b>A. Yes.</b> 10 Q. Do you know why it was tabled? 11 MS. HALPERN: Objection, calls for 12 speculation. 13 Q. (By Ms. Westfall) You may answer. 14 <b>A. Although we moved to make the election</b> 15 <b>identification card free of cost, and we -- through</b> 16 <b>regulations with the DPS, and we moved through</b> 17 <b>regulations with the Health and Human Services to</b> 18 <b>eliminate the charges for a birth certificate, and to</b> 19 <b>leave it either zero or maximum 3 dollars, I believe</b> 20 <b>that there was some concern that this would mean any</b> 21 <b>identification -- "an agency, institution or political</b> 22 <b>subdivision of the State may not charge any fee for the</b> 23 <b>issuance of document..."</b> 24 <b>I think perhaps, in retrospect as I look</b> 25 <b>back upon it, the procedure in looking at some of these</b></p>	<p style="text-align: right;">200</p> <p>1 use of photo IDs that had been expired for two years? 2 <b>A. Counsel, I don't remember, but as we go through</b> 3 <b>this, we'll find out the answer.</b> 4 Q. Turning your attention to Amendment Number 19 5 on Page 123, do you see that Senator Ellis offered an 6 amendment which would have allowed the use of IDs -- I'm 7 sorry -- which would have permitted the use of unexpired 8 student photo IDs issued by public universities in 9 Texas? 10 <b>A. Yes.</b> 11 Q. Are you aware that Indiana's photo ID law 12 allows the use of expired student -- of unexpired 13 student photo IDs? 14 <b>A. No.</b> 15 Q. And you see that this amendment was tabled; is 16 that correct? 17 <b>A. That is correct. I know a number of us,</b> 18 <b>including myself, with all due respect to the ladies</b> 19 <b>here today, there had been some conversation about,</b> 20 <b>although there was support for students and facilitating</b> 21 <b>them voting, there are arguably hundreds of different</b> 22 <b>community colleges and universities, and every student</b> 23 <b>ID from a different university or college or a community</b> 24 <b>college would have been different, and it would have</b> 25 <b>been virtually impossible for election officials to be</b></p>

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<p style="text-align: right;">201</p> <p>1 able to know which ones were valid and which ones 2 weren't, which ones had been forged, which ones had not. 3 Q. Isn't it true that most students -- you have to 4 vote where you reside, generally? 5 <b>A. Generally, but that's sometimes not followed in 6 practice.</b> 7 Q. Isn't it true that most students would be 8 voting close to their universities? 9 MS. HALPERN: Objection, assumes facts not 10 in evidence. 11 <b>A. I repeat what I said. Generally, but not 12 always.</b> 13 Q. (By Ms. Westfall) So wouldn't it be true 14 generally that poll workers would be likely to have an 15 understanding of student IDs that were locally issued 16 within that neighborhood? 17 MS. HALPERN: Objection, assumes facts not 18 in evidence. 19 Q. (By Ms. Westfall) You may answer. 20 <b>A. I can only speculate, and I wouldn't know 21 whether poll workers would have knowledge of the ID or 22 not.</b> 23 Q. Turning your attention to Amendment Number 21. 24 MR. HALPERN: Counsel, I want to ask a 25 clarification. I want to be sure that the questions</p>	<p style="text-align: right;">203</p> <p>1 Georgia photo ID laws, voters are permitted to use 2 federal IDs and state IDs with a photo? 3 <b>A. Yes.</b> 4 Q. And this Amendment Number 21 was tabled, was it 5 not? 6 <b>A. Yes.</b> 7 Q. Do you know why bill supporters opposed this 8 amendment, given that it would make Senate Bill 14 more 9 closely aligned with the Indiana and Georgia laws? 10 <b>A. No, other than the majority of the Senators 11 chose to vote against it.</b> 12 Q. Turning your attention to Floor Amendment 13 Number 24 on Page 126 of this exhibit, do you see that 14 Senator Hinojosa offered an amendment which would have 15 allowed county commissioners to authorize county 16 election officials to issue a voter registration card 17 with a photo ID? 18 <b>A. Yes.</b> 19 Q. If this amendment had been adopted in counties 20 that opted to provide this service, wouldn't it have 21 significantly reduced the burden of obtaining a photo ID 22 on voters who lacked requisite ID? 23 <b>A. Not necessarily.</b> 24 Q. Why not? 25 <b>A. Because, as we've discussed four or five or six</b></p>
<p style="text-align: right;">202</p> <p>1 that you're asking are the ones that he's answering. 2 Are you asking him why the particular amendment was 3 tabled, why Senator Fraser did what he did, or are you 4 asking his opinion of why tabling it was a good idea? 5 MS. WESTFALL: Well, let me ask the 6 question. Why don't we take it up with a real question, 7 Counsel. 8 Q. (By Ms. Westfall) Turning your attention to 9 Amendment Number 21, do you see that Senator Davis 10 offered an amendment which would have allowed the use of 11 IDs with a photo issued by the federal government or the 12 State of Texas? 13 MR. HALPERN: Objection, misstates the 14 amendment. 15 Q. (By Ms. Westfall) You may answer. 16 MS. HALPERN: "An agency, institution or 17 political subdivision of the State, or an institution of 18 higher education in the state." 19 MS. WESTFALL: My question was intended 20 not to repeat verbatim the amendment. 21 Q. (By Ms. Westfall) Could you turn your attention 22 to Floor Amendment Number 21? Do you see that 23 amendment? 24 <b>A. Yes.</b> 25 Q. Are you aware that under the Indiana and</p>	<p style="text-align: right;">204</p> <p>1 <b>or seven times, you have an election identification 2 certificate being offered free of charge by the 3 Department of Public Safety, and -- or -- or someone 4 could apply for and receive a driver's license.</b> 5 Q. Is it your testimony that a voter who goes to a 6 voter registration -- an election official to register 7 to vote, and then separately obtains an EIC through the 8 driver's license office is as easy to do as going to 9 register to vote and getting your picture taken at the 10 same time in one trip? 11 MR. BRISSENDEN: Objection, form. 12 Q. (By Ms. Westfall) You may answer. 13 <b>A. It may require a separate trip. It may not be 14 as easy, but now we're talking about relative terms.</b> 15 Q. Turning your attention to Floor Amendment 16 Number 29. 17 <b>A. You have to keep in mind, Counsel, that I 18 wasn't voting on these.</b> 19 Q. I appreciate your testimony. 20 <b>A. And as a result -- okay.</b> 21 Q. Well, I just have one more amendment to ask you 22 about, and then we'll be done with this exhibit, I 23 think. 24 <b>A. Sure.</b> 25 Q. Turning your attention to Amendment Number 29,</p>

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<p style="text-align: right;">205</p> <p>1 do you see that Senator Gallegos offered an amendment 2 which would have required DPS to provide extended hours 3 and Saturday hours? 4 <b>A. Yes.</b> 5 Q. It's on Page 129. 6 <b>A. Yes.</b> 7 Q. Are you aware that Senator Fraser said in 8 response to the offering of this amendment, that this 9 was not the place to debate DPS operations? 10 <b>A. I have not read that, but if that's what you</b> 11 <b>represent, I will take your word on that.</b> 12 Q. Do you agree that the debate on Senate Bill 14 13 was not the place to discuss DPS operations? 14 <b>A. I personally don't have a problem with -- with</b> 15 <b>using the debate on Senate Bill 14 to discuss the hours</b> 16 <b>of when people could apply for and receive their</b> 17 <b>driver's license, A, or B, their free election</b> 18 <b>identification card.</b> 19 <b>But what has, in fact, and what Senator</b> 20 <b>Fraser may have had in mind is, as I shared with you</b> 21 <b>before, the implementation, a lot of details of the</b> 22 <b>actual mechanics of bills, this isn't we got to pass a</b> 23 <b>2,000-page bill and we'll read it to see what's in it,</b> 24 <b>but to implement the details as carried out by the</b> 25 <b>regulating agencies. And this is exactly what has</b></p>	<p style="text-align: right;">207</p> <p>1 <b>said that?</b> 2 Q. Certainly. 3 MS. WESTFALL: Could you mark this? 4 (Exhibit 29 marked for identification.) 5 Q. (By Ms. Westfall) You've been handed what's 6 been marked as Exhibit 29. It's been produced in this 7 litigation as highly confidential. It's TX00034469 8 through 71. Could you look at this document and let me 9 know when you've had a chance to review it. 10 <b>A. I have looked at it.</b> 11 Q. Have you seen this e-mail before or the 12 attachment? 13 <b>A. No.</b> 14 Q. Do you see that in the first line of 15 TX00034470, summarizing the bill, Mr. Hebert states 16 Senate Bill 14 would give Texas arguably the strictest 17 photo ID law in the country? 18 <b>A. I do.</b> 19 Q. Did he share that view with you? 20 <b>A. No.</b> 21 Q. Do you see the e-mail that he wrote on the 22 prior page at TX00034469 was dated January 27, 2011? 23 <b>A. 2000 -- I'm sorry, did you say --</b> 24 Q. At the top of the e-mail, do you see that 25 it's -- at the top -- at the previous page, sir.</p>
<p style="text-align: right;">206</p> <p>1 <b>happened, that we have opened DPS offices, at least</b> 2 <b>certain DPS offices, quite a few on Saturdays, and I</b> 3 <b>don't know that we've opened them to 7 p.m. or later at</b> 4 <b>least one weekday night, but that's probably a good</b> 5 <b>idea.</b> 6 Q. But can you think of any reason not to include 7 these amendments to Senate Bill 14, as opposed to 8 discussing them with DPS post-enactment? 9 <b>A. Well, the bottom line and the practical effect</b> 10 <b>is we've implemented most of this. I, for one, may have</b> 11 <b>voted for it, but it was nevertheless -- we are -- in</b> 12 <b>the practical sense, we're carrying this out at the</b> 13 <b>present time. If memory serves, of the 41 different</b> 14 <b>amendments, the Senators approved 9, roughly 25 percent.</b> 15 Q. Do you recall that Bryan Hebert, after the 16 Senate -- strike that. 17 Did the Senate pass Senate Bill 14? 18 <b>A. Yes.</b> 19 Q. Do you recall that after the Senate passed 20 Senate Bill 14, Bryan Hebert characterized it as the 21 strictest photo ID law in the country? 22 MR. HALPERN: Objection, mischaracterizes 23 the document. 24 Q. (By Ms. Westfall) You may answer. 25 <b>A. Could you share with me the context in which he</b></p>	<p style="text-align: right;">208</p> <p>1 <b>A. Yes. Right here?</b> 2 Q. Do you see at the top of the e-mail, it 3 indicates this e-mail was sent January 27, 2011? 4 <b>A. Yes, I do.</b> 5 Q. And was that the day after the Senate passed 6 Senate Bill 14? 7 <b>A. I believe that's right.</b> 8 Q. Did you at that time agree with Mr. Hebert's 9 assessment that Senate Bill 14 would give Texas arguably 10 the strictest photo ID law? 11 <b>A. Congratulations. You've done that about seven</b> 12 <b>or eight times. That is not my testimony. You've never</b> 13 <b>put that into evidence. I have no idea. This is the</b> 14 <b>first I've seen that where he has stated for some</b> 15 <b>audience, one, two, three, four, five, six people, that</b> 16 <b>Texas arguably, arguably has the strictest photo ID law</b> 17 <b>in the country. I respect his opinion. Don't know if</b> 18 <b>it's right or wrong.</b> 19 Q. Do you believe that it was the intent of the 20 Texas Legislature to enact the strictest photo ID law in 21 the country? 22 <b>A. It was the intent of the legislature, it was</b> 23 <b>the intent of the Lieutenant Governor to pass a -- a</b> 24 <b>photo voter ID bill which reduced fraud, and not to</b> 25 <b>repeat myself, I apologize, but to improve the</b></p>

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<p style="text-align: right;">209</p> <p>1 confidence by the voters in Texas in our election 2 process. Because I warrant to you, most voters didn't 3 have a lot of confidence in the validity of their vote 4 counting one person, one vote, and as a result, increase 5 the turnout of voters. Because in Texas, we have a real 6 problem with low voter turnout.</p> <p>7 Q. Is it your understanding that the bill signed 8 into law is even stricter than the version of Senate 9 Bill 14 that was passed by the Senate?</p> <p>10 MS. HALPERN: Objection, misstates the 11 evidence.</p> <p>12 Q. (By Ms. Westfall) You may answer.</p> <p>13 A. The bill that we looked at a few moments ago, 14 that was the filed -- or filed bill?</p> <p>15 Q. That was the filed bill.</p> <p>16 A. The -- can you show me a copy of the bill as 17 passed?</p> <p>18 Q. Bear with me one moment.</p> <p>19 MS. WESTFALL: Let's mark this. 20 (Exhibit 30 marked for identification.)</p> <p>21 A. What you showed me, Counsel, on Exhibit 29, not 22 to doubt my own general counsel or deputy, but are these 23 substantially the terms of the bill as it passed out of 24 the Senate? Because then I'm going to compare that to 25 the bill as passed.</p>	<p style="text-align: right;">211</p> <p>1 physician certificate of the disability, asked for an 2 exemption, some written documentation from the Social 3 Security Administration or the Veterans Affairs, as 4 applicable. So that's a change.</p> <p>5 On the -- I think that the religious 6 objection to being photographed is the same, but I don't 7 know about the indigent.</p> <p>8 Q. Do you believe that that was taken out during 9 the conference committee?</p> <p>10 A. Was it? Okay. So there would be two changes 11 there.</p> <p>12 Q. And turning your attention to the exception for 13 voters age 70 and older --</p> <p>14 A. Uh-huh.</p> <p>15 Q. -- do you recall that that was not in the 16 signed version of the bill?</p> <p>17 A. That's right. That's right. It wasn't. And I 18 had wanted -- I'd wanted that to be in there.</p> <p>19 Q. Comparing the two versions, the Senate-passed 20 version versus what was signed into law, would you -- is 21 it fair to say that the bill signed into law was 22 stricter than the bill enacted by the Senate?</p> <p>23 MR. BRISSENDEN: Objection, form.</p> <p>24 Q. (By Ms. Westfall) You may answer.</p> <p>25 A. The bill that we passed out of the Senate had</p>
<p style="text-align: right;">210</p> <p>1 Q. (By Ms. Westfall) Okay. Let me see if I can 2 craft a question that will -- I will represent to you 3 that Exhibit Number 29, the summary -- voter ID bill 4 summary substantive provisions represents, I believe, an 5 accurate description of the Senate passed.</p> <p>6 A. Thank you.</p> <p>7 Q. So comparing that with the Senate -- with the 8 legislature -- with the final signed version, is it fair 9 to say that the bill, as signed into law, was even 10 stricter than the version that passed the Senate?</p> <p>11 MR. BRISSENDEN: Objection, form.</p> <p>12 Q. (By Ms. Westfall) You may answer.</p> <p>13 MS. HALPERN: Take your time.</p> <p>14 A. Well, under the Substantive Provisions -- I'm 15 tired -- under the Substantive Provisions, the first six 16 points are the same.</p> <p>17 Let me go to the Exceptions. Under 18 Exception Number 2 --</p> <p>19 Q. (By Ms. Westfall) Yes.</p> <p>20 A. -- a voter who is disabled and has provided a 21 physician certificate of the disability to the registrar 22 and received a registration card marked "Photo ID not 23 required" need only present the registration card on 24 Election Day.</p> <p>25 The bill as passed, instead of having a</p>	<p style="text-align: right;">212</p> <p>1 several more exemptions.</p> <p>2 Q. I believe you testified earlier that the 3 election identification certificate was inserted into 4 the bill during conference committee; is that correct?</p> <p>5 A. Yes, I believe that's correct.</p> <p>6 Q. Did Mr. Hebert assist you in developing the 7 EIC -- I'll refer to it as the EIC -- the EIC provision?</p> <p>8 MR. HALPERN: Objection, lack of 9 foundation. Assumes facts not in evidence. Compound.</p> <p>10 Q. (By Ms. Westfall) You may answer.</p> <p>11 A. I don't remember. I remember that we briefly 12 discussed creating this document in the conference 13 committee and wanting it to be free to a perspective 14 voter -- to a voter.</p> <p>15 Q. Did SB 14, as filed, prohibit DPS from charging 16 a fee for personal IDs issued to persons who affirmed 17 that they did not otherwise have qualifying ID?</p> <p>18 A. As filed?</p> <p>19 Q. As filed.</p> <p>20 A. I don't remember. You want me to look back and 21 take a look?</p> <p>22 Q. I believe you testified earlier about the 23 personal IDs that were available in the filed version.</p> <p>24 A. Right.</p> <p>25 Q. Do you recall that?</p>



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<p style="text-align: right;">213</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. And did -- let me ask you another question</p> <p>3 before you refer back to that exhibit.</p> <p>4 Was the EIC provision adopted in the</p> <p>5 conference committee designed to address budgetary or</p> <p>6 accounting concerns related to the Texas Mobility Fund</p> <p>7 as it pertained to the personal IDs?</p> <p>8 <b>A. That's not my intention. The intention was to</b></p> <p>9 <b>provide a -- a free identification card.</b></p> <p>10 Q. Was the budget for the EICs derived from a</p> <p>11 different source, other than the Texas Mobility Fund?</p> <p>12 MS. HALPERN: If you know.</p> <p>13 <b>A. I don't know.</b></p> <p>14 Q. (By Ms. Westfall) Was it your understanding</p> <p>15 that the personal state ID that was provided for in the</p> <p>16 Senate, the version of the Senate Bill 14 as filed,</p> <p>17 could be used for purposes other than voting?</p> <p>18 <b>A. I remember that it could not be used for</b></p> <p>19 <b>driver's license purposes. And I'd have to go back and</b></p> <p>20 <b>take a look at the language in the filed version.</b></p> <p>21 Q. Okay. Let's --</p> <p>22 <b>A. What exhibit is that?</b></p> <p>23 Q. I believe it's Exhibit --</p> <p>24 <b>A. Fifteen?</b></p> <p>25 MS. FARANSSO: The filed version?</p>	<p style="text-align: right;">215</p> <p>1 Q. Was it late August 2012?</p> <p>2 <b>A. Late August 2012.</b></p> <p>3 Q. Did you take any actions in response to that</p> <p>4 decision?</p> <p>5 <b>A. I don't know whether or not I was named -- I</b></p> <p>6 <b>don't remember whether or not I was named one of the</b></p> <p>7 <b>plaintiffs in the case. I don't know.</b></p> <p>8 Q. And I'll represent to you that it was the State</p> <p>9 of Texas that brought the lawsuit --</p> <p>10 <b>A. Okay.</b></p> <p>11 Q. -- and not you. But did you -- did you take</p> <p>12 any actions in response to the decision?</p> <p>13 <b>A. Other than talk to the Senators, tell them that</b></p> <p>14 <b>this was expected based upon the current makeup of the</b></p> <p>15 <b>Department of Justice, and that I felt comfortable -- I</b></p> <p>16 <b>felt confident that we would prevail, whether it's in</b></p> <p>17 <b>the Fifth Circuit or going all the way to the Supreme</b></p> <p>18 <b>Court, since I've never seen any indication in my</b></p> <p>19 <b>legislative life of any attempt to suppress votes, but</b></p> <p>20 <b>in this particular effort to expand our voter base.</b></p> <p>21 Q. And just to be clear for the record, were you</p> <p>22 testifying about the Department of Justice's decision to</p> <p>23 deny preclearance, or were you discussing the three-</p> <p>24 judge court opinion and your reaction to that?</p> <p>25 <b>A. The decision by the Department of Justice.</b></p>
<p style="text-align: right;">214</p> <p>1 MS. WESTFALL: The filed version.</p> <p>2 Fifteen?</p> <p>3 MS. HALPERN: I'm sorry. What's the</p> <p>4 question pending?</p> <p>5 MS. WESTFALL: The question is whether the</p> <p>6 personal state ID that was available, if you didn't have</p> <p>7 others forms of Senate Bill 14 ID in the filed version,</p> <p>8 could be used for purposes other than voting.</p> <p>9 <b>A. Well, on the filed version, I'm looking at</b></p> <p>10 <b>Section 63.0101, one and the whole, that talks about "or</b></p> <p>11 <b>personal identification card issued to a person by the</b></p> <p>12 <b>Department of Public Safety that is not expired," and I</b></p> <p>13 <b>-- I don't see the answer to your question.</b></p> <p>14 Q. (By Ms. Westfall) Are there any prohibitions on</p> <p>15 using that personal ID card for uses other than voting?</p> <p>16 <b>A. I don't see -- if there are, I don't see it in</b></p> <p>17 <b>the introduced version of Senate Bill 14.</b></p> <p>18 Q. Are you -- have you -- are you familiar with</p> <p>19 the opinion in the Texas versus Holder case denying</p> <p>20 judicial preclearance of Senate Bill 14?</p> <p>21 <b>A. Only to the extent that preclearance was -- was</b></p> <p>22 <b>turned down.</b></p> <p>23 Q. Do you know when that opinion was issued,</p> <p>24 roughly?</p> <p>25 <b>A. 2012.</b></p>	<p style="text-align: right;">216</p> <p>1 Q. Did you have -- are you familiar with the</p> <p>2 opinion issued by the three-judge court in Texas versus</p> <p>3 Holder in August 2012?</p> <p>4 <b>A. Generally.</b></p> <p>5 Q. Did you take any actions in response to the</p> <p>6 decision by the court?</p> <p>7 <b>A. No.</b></p> <p>8 Q. Did you propose any changes to Senate Bill 14?</p> <p>9 <b>A. No.</b></p> <p>10 Q. How many times did the Legislature meet after</p> <p>11 the decision came down in August 2012?</p> <p>12 <b>A. How many times did the Legislature meet?</b></p> <p>13 Q. Uh-huh.</p> <p>14 <b>A. We met in regular session in January 2013, and</b></p> <p>15 <b>we were in three special sessions during the summer of</b></p> <p>16 <b>2013.</b></p> <p>17 Q. Were any committee hearings held related to</p> <p>18 Voter ID during that period?</p> <p>19 <b>A. No.</b></p> <p>20 Q. Did you urge the Senate to convene any hearings</p> <p>21 related to Voter ID?</p> <p>22 <b>A. No.</b></p> <p>23 Q. Were any interim session committees convened to</p> <p>24 consider Voter ID?</p> <p>25 <b>A. I don't remember which -- if we had interim</b></p>

<p style="text-align: right;">217</p> <p>1 <b>charges on that. We may have.</b></p> <p>2 Q. And did the 2012 presidential election occur</p> <p>3 after the court's decision was issued?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Were there any efforts by the Legislature, you</p> <p>6 were aware of, to hold hearings, convene a task force,</p> <p>7 or otherwise examine the administration of the 2012</p> <p>8 presidential election?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Were you aware of any in-person voter --</p> <p>11 <b>A. Let's go back.</b></p> <p>12 Q. Certainly.</p> <p>13 <b>A. Could you rephrase your question?</b></p> <p>14 Q. Do you not understand the question?</p> <p>15 <b>A. I'm not sure what you're getting at. In other</b></p> <p>16 <b>words, what I think you asked is whether or not I</b></p> <p>17 <b>convened any committees to look into the 2012</b></p> <p>18 <b>presidential election. What specifically are you</b></p> <p>19 <b>asking?</b></p> <p>20 Q. About the administration, how the</p> <p>21 administration went in the State of Texas.</p> <p>22 <b>A. The administration of?</b></p> <p>23 Q. The 2012 election, yes, sir.</p> <p>24 MS. HALPERN: Objection, relevance.</p> <p>25 Q. (By Ms. Westfall) You may answer.</p>	<p style="text-align: right;">219</p> <p>1 between August 2012 and June 2013, are you aware of any</p> <p>2 in-person voter impersonation that occurred in Texas?</p> <p>3 <b>A. No.</b></p> <p>4 Q. As of June 26th or 25th, 2013, did Texas start</p> <p>5 to enforce Senate Bill 14?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Has your office played any role in the</p> <p>8 implementation of Senate Bill 14?</p> <p>9 <b>A. Other than to monitor its implementation and</b></p> <p>10 <b>the effects on the State, which are continuing interim</b></p> <p>11 <b>charges that I have the responsible Senators, the</b></p> <p>12 <b>appropriate Senators working on, no.</b></p> <p>13 Q. Is an interim charge in the works presently, or</p> <p>14 when will this occur?</p> <p>15 <b>A. It was -- it was in -- it was included in the</b></p> <p>16 <b>interim period between the 2011 session and the 2013</b></p> <p>17 <b>session, and it's one of our interim charges that we</b></p> <p>18 <b>have at the present time that hasn't been issued yet.</b></p> <p>19 <b>It is in the process of being issued for the</b></p> <p>20 <b>jurisprudence committee.</b></p> <p>21 Q. And when will that -- is that convening a</p> <p>22 committee or a charge in the future?</p> <p>23 <b>A. No. It's a study. It's a study whereby we're</b></p> <p>24 <b>looking to see if there are problems, challenges, things</b></p> <p>25 <b>we have to address in the implementation of Senate Bill</b></p>
<p style="text-align: right;">218</p> <p>1 MR. BRISSENDEN: Objection, form.</p> <p>2 <b>A. I have tasked my staff, we talked to the</b></p> <p>3 <b>Attorney General's Office about whether or not there are</b></p> <p>4 <b>examples of undue burden by anyone, including</b></p> <p>5 <b>minorities, in order to obtain information -- voter IDs</b></p> <p>6 <b>and vote, and to the best of my knowledge, there is --</b></p> <p>7 <b>has not been a problem in the State of Texas.</b></p> <p>8 Q. (By Ms. Westfall) Okay. Just to be clear in</p> <p>9 terms of the time, I want to focus your attention on the</p> <p>10 time between when the three-judge court issued the</p> <p>11 ruling in August 2012, to the time when Senate Bill 14</p> <p>12 went into effect in June 2013. At that time, is it</p> <p>13 correct that voter ID was not enforced in the State of</p> <p>14 Texas?</p> <p>15 <b>A. During the time period up until June of 2013?</b></p> <p>16 Q. Yes.</p> <p>17 <b>A. That is correct.</b></p> <p>18 Q. Are you aware of any in-person voter</p> <p>19 impersonation that occurred during the 2012 presidential</p> <p>20 election in the State of Texas?</p> <p>21 <b>A. I testified earlier that we were apprised of</b></p> <p>22 <b>multiple cases of in-person fraud in the period leading</b></p> <p>23 <b>up to the 2009 and 2011 sessions. But I'm not aware of</b></p> <p>24 <b>any in-person fraud in the 2012 presidential election.</b></p> <p>25 Q. During any election in the State in Texas</p>	<p style="text-align: right;">220</p> <p>1 <b>14.</b></p> <p>2 Q. And when will that get underway?</p> <p>3 <b>A. It's either underway or will soon be underway,</b></p> <p>4 <b>and with a report due back the end of December.</b></p> <p>5 Q. Will it be examining implementation of Senate</p> <p>6 Bill 14 in the November election of this year?</p> <p>7 <b>A. Yes, as well as collecting information on -- on</b></p> <p>8 <b>the November 2013 election, the March 4th primary</b></p> <p>9 <b>election, the May 27th run-off election, and the</b></p> <p>10 <b>November election.</b></p> <p>11 Q. What information is it gathering for that</p> <p>12 report?</p> <p>13 <b>A. If there -- the implementation of the voting</b></p> <p>14 <b>process, if, in fact, there's a smooth effort for people</b></p> <p>15 <b>to vote, if there are problems with the obtaining of</b></p> <p>16 <b>photo voter ID or other ID so that are we, in fact,</b></p> <p>17 <b>achieving our goal of expanding our voter base and</b></p> <p>18 <b>making sure that A, this is constitutional, and B, there</b></p> <p>19 <b>are no barriers to people voting.</b></p> <p>20 Q. Is that part of the interim charge, determining</p> <p>21 whether there is an impact by race of voter, or is it</p> <p>22 voters overall?</p> <p>23 <b>A. Voters overall.</b></p> <p>24 Q. Are you aware of any efforts to determine the</p> <p>25 number of provisional ballots cast for lack of</p>

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<p style="text-align: right;">221</p> <p>1 qualifying photo ID under Senate Bill 14?</p> <p>2 <b>A. I've asked for that information. I don't have</b></p> <p>3 <b>it.</b></p> <p>4 MS. WESTFALL: Would you mark this?</p> <p>5 (Exhibit 31 marked for identification.)</p> <p>6 Q. (By Ms. Westfall) You've been handed what's</p> <p>7 been marked as Exhibit 31.</p> <p>8 <b>A. Uh-huh.</b></p> <p>9 Q. Do you recognize this document?</p> <p>10 <b>A. Is a press release issued by my office on</b></p> <p>11 <b>January 26, 2011.</b></p> <p>12 Q. Did you authorize this language of this press</p> <p>13 release before it was issued?</p> <p>14 <b>A. I don't know if I did or not. I think this one</b></p> <p>15 <b>was written by our press secretary, Mike Walz.</b></p> <p>16 Q. Did you see this language and approve of this</p> <p>17 language before it was issued?</p> <p>18 <b>A. I'm not -- I don't remember that I did. I, in</b></p> <p>19 <b>earlier releases, have used the words "eligible voters."</b></p> <p>20 <b>So I don't know that I had time to review this or not.</b></p> <p>21 Q. Do you know why this press release refers to</p> <p>22 ensuring that only U.S. citizens are able to vote in</p> <p>23 Texas elections?</p> <p>24 <b>A. Well, that's what I addressed just a moment ago</b></p> <p>25 <b>when I said "eligible voters," by ensuring that only</b></p>	<p style="text-align: right;">223</p> <p>1 <b>A. The date on the release is March 12, 2012.</b></p> <p>2 Q. Was that the day when the administrative</p> <p>3 preclearance of Senate Bill 14 was denied?</p> <p>4 <b>A. I believe that's right.</b></p> <p>5 Q. And do you see four paragraphs down, there is a</p> <p>6 quote about the Voter ID law ensuring every legal</p> <p>7 citizen can exercise their right to vote?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Do you know why the release indicates that the</p> <p>10 voter ID will have that effect?</p> <p>11 <b>A. Because it's been our intent that every legal</b></p> <p>12 <b>citizen can exercise their right to vote, and that was</b></p> <p>13 <b>the intent behind the free election identification card,</b></p> <p>14 <b>as well as trying to expedite the issuance of driver's</b></p> <p>15 <b>licenses.</b></p> <p>16 Q. And I think earlier today you testified that</p> <p>17 some forms of the ID in Senate Bill 14 would not</p> <p>18 necessarily show that the cardholder --</p> <p>19 <b>A. That is exactly right. That is exactly right.</b></p> <p>20 Q. And how is that consistent with this press</p> <p>21 release?</p> <p>22 <b>A. Because you're talking about apples and</b></p> <p>23 <b>oranges, Counsel. You're talking -- you're talking is</b></p> <p>24 <b>the glass half full instead of the glass half empty.</b></p> <p>25 <b>Earlier we were talking about U.S. citizens, we were</b></p>
<p style="text-align: right;">222</p> <p>1 eligible voters vote in Texas elections. I -- I had</p> <p>2 been -- since -- since all of the voter ID and photo</p> <p>3 voter bills are a -- are a measure of</p> <p>4 step-in-the-direction of reducing fraud, building up</p> <p>5 more confidence in the integrity of the election</p> <p>6 process, and increasing voter turnout, and they're not a</p> <p>7 -- as we discussed in some of your exhibits earlier, in</p> <p>8 every case, a -- a measure to ensure that only U.S.</p> <p>9 citizens vote, I think I -- I would have used the word</p> <p>10 "eligible voters" instead of "U.S. citizens." But this</p> <p>11 came out of my office, so I obviously have to stand by</p> <p>12 it.</p> <p>13 Q. Thank you, sir.</p> <p>14 MS. WESTFALL: Could you mark this?</p> <p>15 (Exhibit 32 marked for identification.)</p> <p>16 Q. (By Ms. Westfall) You've been handed what's</p> <p>17 been marked as Exhibit 32. Do you recognize this</p> <p>18 document?</p> <p>19 <b>A. It's a press release from our office.</b></p> <p>20 Q. If you could review this and let me know</p> <p>21 whether you approved this language before it was</p> <p>22 included in this release.</p> <p>23 <b>A. Yes, I did.</b></p> <p>24 Q. Turning your attention to the -- and what is</p> <p>25 the date of the release?</p>	<p style="text-align: right;">224</p> <p>1 talking about earlier testimony that not all forms of</p> <p>2 the identification would prove that someone is an</p> <p>3 eligible voter and a U.S. citizen.</p> <p>4 What I'm saying here, and I may have been</p> <p>5 very quick in writing this, but what I was trying to say</p> <p>6 is that at least, if you're a legal citizen and an</p> <p>7 eligible voter, you should be able to vote. Because,</p> <p>8 among other things, we're including passports, concealed</p> <p>9 gun -- handgun licenses, government issued photo</p> <p>10 driver's license and free identification. That's where</p> <p>11 I was coming from.</p> <p>12 Q. Okay, thank you.</p> <p>13 (Exhibit 33 marked for identification.)</p> <p>14 Q. (By Ms. Westfall) You've been handed what's</p> <p>15 been marked Exhibit 33. Do you recognize this document?</p> <p>16 <b>A. No. But it looks to be like a copy of a</b></p> <p>17 <b>newspaper story by the Houston Chronicle.</b></p> <p>18 Q. Do you see that this is -- do you see the date</p> <p>19 on this article?</p> <p>20 <b>A. The article says April 25, 2007.</b></p> <p>21 Q. Would this have pertained to the Senate's</p> <p>22 consideration of House Bill 218?</p> <p>23 MR. BRISSENDEN: Objection, form.</p> <p>24 Q. (By Ms. Westfall) You may answer.</p> <p>25 <b>A. It may. I haven't read it yet, but it may</b></p>

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<p style="text-align: right;">225</p> <p>1 <b>have. I don't know.</b></p> <p>2 MR. HALPERN: I'm going to direct you to</p> <p>3 read it before you testify about it.</p> <p>4 THE WITNESS: All right.</p> <p>5 Q. (By Ms. Westfall) I would direct your attention</p> <p>6 to the fourth and fifth paragraph.</p> <p>7 MS. HALPERN: I'm still going to ask him</p> <p>8 to read the entire article before he answers any</p> <p>9 questions about it, Counsel. It's a newspaper article.</p> <p>10 Q. (By Ms. Westfall) Could you let me know when</p> <p>11 you've had a chance to review this?</p> <p>12 <b>A. Certainly. I've read it.</b></p> <p>13 Q. Do you, where it quotes -- it purports to quote</p> <p>14 you five paragraphs in, as concerning voter ID, "Why</p> <p>15 isn't it necessary to prove that you're a U.S. citizen</p> <p>16 to vote in U.S. elections?" Do you see that?</p> <p>17 <b>A. Yes, I do.</b></p> <p>18 Q. Do you believe it's an accurate quote?</p> <p>19 <b>A. I don't know whether it's accurate or not. I</b></p> <p>20 <b>don't know what -- under what circumstances -- if the</b></p> <p>21 <b>question was asked and I answered it. But I'm more</b></p> <p>22 <b>focused on proving who you are and having eliminating</b></p> <p>23 <b>fraud and having more confidence in the election</b></p> <p>24 <b>process. You know, I've been asked so many times,</b></p> <p>25 <b>Counsel, if you have to have a photo -- if you have to</b></p>	<p style="text-align: right;">227</p> <p>1 <b>A. It furthers it -- it furthers it, but it</b></p> <p>2 <b>doesn't eliminate the chance of someone who's not a U.S.</b></p> <p>3 <b>citizen to be able to vote, because not all of our forms</b></p> <p>4 <b>of photo ID require that -- and perhaps unfortunately --</b></p> <p>5 <b>that someone be shown to be an eligible voter, a U.S.</b></p> <p>6 <b>citizen, as our voter application shows, that they're</b></p> <p>7 <b>not a felon, that they're not mentally adjudicated not</b></p> <p>8 <b>to be able to vote, and that they live in the county in</b></p> <p>9 <b>which they registered to vote.</b></p> <p>10 Q. And why were you focusing on the particular</p> <p>11 requirement of U.S. citizenship and not other</p> <p>12 requirements to be eligible to vote in this quotation?</p> <p>13 <b>A. Counsel, I have no idea. This is simply one</b></p> <p>14 <b>quote. I could have been asked this question and I</b></p> <p>15 <b>answered back.</b></p> <p>16 Q. And you've been handed what's been marked as</p> <p>17 Exhibit 34.</p> <p>18 <b>A. Uh-huh, yes.</b></p> <p>19 Q. Do you recognize this document?</p> <p>20 <b>A. No, but I have in front of me a -- it looks</b></p> <p>21 <b>like a blog entitled "Dewhurst is Disappointed Voter ID</b></p> <p>22 <b>Measure Failed."</b></p> <p>23 Q. Do you see the date of the blog?</p> <p>24 <b>A. Yes. It says June 1, 2007.</b></p> <p>25 Q. And do you see that you were quoted in</p>
<p style="text-align: right;">226</p> <p>1 <b>have a photo ID to get on a plane, buy Sudafed, check</b></p> <p>2 <b>out a library book, why shouldn't you have one to vote,</b></p> <p>3 <b>which is so important and affects all of our lives?</b></p> <p>4 Q. So, in other words, you're not sure whether</p> <p>5 this is an accurate quote?</p> <p>6 <b>A. It may be accurate, it may not be accurate.</b></p> <p>7 <b>And I don't know whether I was responding to someone</b></p> <p>8 <b>that asked me that question: Why should you have to</b></p> <p>9 <b>prove that you're a U.S. citizen? So I don't know the</b></p> <p>10 <b>circumstances.</b></p> <p>11 Q. Thank you, sir.</p> <p>12 MS. WESTFALL: Could you mark this?</p> <p>13 (Exhibit 34 marked for identification.)</p> <p>14 <b>A. But let me go back, Counsel. I'm fine. I said</b></p> <p>15 <b>it within some context, and I believe it.</b></p> <p>16 Q. (By Ms. Westfall) And turning back to -- and</p> <p>17 you're referring now to Exhibit 33?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And so you think that this quotation is</p> <p>20 properly attributable to you: Why isn't it necessary to</p> <p>21 prove that you are a U.S. citizen to vote in U.S.</p> <p>22 elections?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. And how did Voter ID further that purpose of</p> <p>25 showing that the cardholder was a U.S. citizen?</p>	<p style="text-align: right;">228</p> <p>1 Paragraph 2 concerning your disappointment?</p> <p>2 <b>A. Yes, I do.</b></p> <p>3 Q. Do you believe that you were accurately quoted</p> <p>4 in Paragraph 2 about your disappointment concerning the</p> <p>5 voter ID program and your assertion that there were</p> <p>6 thousands and thousands of noncitizens voting in Texas?</p> <p>7 MR. HALPERN: Objection, no foundation.</p> <p>8 Q. (By Ms. Westfall) You may answer.</p> <p>9 <b>A. I don't know whether I was quoted accurately or</b></p> <p>10 <b>not, but I did provide ample testimony, which I repeated</b></p> <p>11 <b>on several occasions, that the testimony before us in</b></p> <p>12 <b>the 2009 and 2011 hearings proved this up, and -- and</b></p> <p>13 <b>although it's anecdotal, my traveling the state for a</b></p> <p>14 <b>period of six years, seven years talking to people who</b></p> <p>15 <b>wanted to see a fair voter ID bill passed, and they're</b></p> <p>16 <b>sharing with me stories, admittedly anecdotal, persuaded</b></p> <p>17 <b>me then and now that we have a number of ineligible</b></p> <p>18 <b>people who have voted in Texas.</b></p> <p>19 Q. And how did Voter ID -- I believe you testified</p> <p>20 earlier, did you not, that Voter ID was intended to</p> <p>21 require voters to prove their identity at the polls,</p> <p>22 correct?</p> <p>23 <b>A. Right.</b></p> <p>24 Q. And how would it prevent a noncitizen voting in</p> <p>25 Texas?</p>

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<p style="text-align: right;">229</p> <p>1     <b>A.</b> Our goal is to have eligible people,  2 obviously. The goal -- remember, five or six hours ago,  3 we were talking about the goal is to have eligible  4 people vote. Noncitizens are not eligible people, but  5 our objective is to have people that are eligible,  6 they're U.S. citizens, they -- they're 18 years of age  7 or over, they don't have a mental competency challenge,  8 they're not felons -- I know I'm missing something --  9 and they live in the county in which they are registered  10 to vote. That's what we would like to see. And I  11 believe -- and I believe that the evidence shows, in  12 fact, not anecdotal but empirical evidence shows that  13 will increase turnout. And that's what I want to see.  14 So that -- that was -- that was where I've been coming  15 from.</p> <p>16         Again, this particular quote, I'm quoted  17 saying I was disappointed we did not get a Voter ID  18 program out of here, and then the quotes are thousands  19 and thousands and thousands. It doesn't say of  20 noncitizens, it doesn't say of noneligible, it doesn't  21 say -- I mean, I don't know what I said there, so it's  22 not a quote with me using the word "noncitizens."</p> <p>23     <b>Q.</b> I see. Thank you.</p> <p>24         <b>MS. WESTFALL:</b> I think we will take a  25 quick break and then switch counsel.</p>	<p style="text-align: right;">231</p> <p>1 those laws; is that correct?</p> <p>2     <b>A.</b> Yes, what I testified was that my  3 recommendation was that, in light of all of the  4 concessions that we had made over the years, to try and  5 pull together a consensus on Voter ID and have a  6 bipartisan bill. Since that wasn't successful, and  7 since we didn't want all this effort to be wasted, that  8 I recommended that we -- that we try and model a bill  9 after the Indiana bill that had been approved by the  10 U.S. Supreme Court and the Georgia bill that had been  11 precleared by the Department of Justice. Not to say  12 that it had to be identical, but at least try and model  13 it after those two bills.</p> <p>14     <b>Q.</b> Okay. And you and Ms. Westfall discussed this  15 a bit today, but are you aware that Senate Bill 14 is  16 more restrictive than the Indiana and Georgia photo ID  17 laws?</p> <p>18     <b>A.</b> Well, I'm not sure that I agree with your words  19 of more restrictive, but it does not have as many  20 exceptions as the -- the Indiana and the Georgia bills  21 do.</p> <p>22     <b>Q.</b> And in addition to not having as many  23 exceptions as the Indiana and Georgia bills, would you  24 also agree that the Indiana and Georgia laws contain --  25 permit more forms of photo ID than Senate Bill 14?</p>
<p style="text-align: right;">230</p> <p>1         <b>THE WITNESS:</b> Okay.</p> <p>2         <b>MS. HALPERN:</b> All right. Let's go off the  3 record and figure out the time, because I think we're  4 going to probably take a little bit longer break. This  5 may be close enough to an hour.</p> <p>6         <b>MS. WESTFALL:</b> Okay.</p> <p>7         <b>MS. HALPERN:</b> We'll just call this the  8 hour break.</p> <p>9         (Recess from 5:22 to 6:00 p.m.)</p> <p>10         <b>EXAMINATION</b></p> <p>11 <b>BY MS. FARANSSO:</b></p> <p>12     <b>Q.</b> Lieutenant Governor, again, I'm Tania Faransso.</p> <p>13     <b>A.</b> Tania.</p> <p>14     <b>Q.</b> I'm here on behalf of the Texas League of Young  15 Voters Education Fund and Imani Clark. I won't go over  16 the ground rules that Elizabeth laid for you --</p> <p>17     <b>A.</b> Right.</p> <p>18     <b>Q.</b> -- earlier today, but I trust that they will  19 remain the same --</p> <p>20     <b>A.</b> Yes.</p> <p>21     <b>Q.</b> -- for my questioning.</p> <p>22     <b>A.</b> Yes.</p> <p>23     <b>Q.</b> You testified today, and correct me if I'm  24 wrong, that you wanted to model SB 14 after the Georgia  25 and Indiana laws to make them as close as possible to</p>	<p style="text-align: right;">232</p> <p>1     <b>A.</b> Yes.</p> <p>2     <b>Q.</b> Okay. Did it concern --</p> <p>3     <b>A.</b> However, I never considered that a material  4 difference because, as you heard me testify earlier, we  5 have -- we have tried to identify if there were going to  6 be problems for -- for voters. We've not been able to  7 identify a problem. We have now run four different  8 elections under Senate Bill 14, and I'm not aware of a  9 problem where voters are having a hard time having  10 access to photo voter IDs.</p> <p>11     <b>Q.</b> So at the time, just to be clear, that Senate  12 Bill 14 was being considered, it did not concern you  13 that Senate Bill 14 permitted fewer forms of photo ID  14 than the Georgia and Indiana laws?</p> <p>15     <b>A.</b> No, because what I was focused on is having a  16 bill that was modeled after them, and I left it to  17 Senator Fraser to come up with the structure that --  18 that would provide us a safe harbor, make sure that --  19 that our bill was considered to be constitutional by the  20 U.S. Supreme Court.</p> <p>21     <b>Q.</b> Was it your view that Texas needed a voter ID  22 law that was stricter than the Indiana and Georgia laws?</p> <p>23         <b>MS. HALPERN:</b> Objection, misstates prior  24 testimony.</p> <p>25     <b>A.</b> It wasn't so much as trying -- it wasn't so</p>



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<p style="text-align: right;">233</p> <p>1 much as trying to model the bill after the Indiana and 2 Georgia bill as it was to go back to what I said earlier 3 repeatedly, and that is to -- to reduce voter fraud, 4 increase the -- the integrity of the election process, 5 and build up more confidence in the voters of Texas that 6 their vote is going to count, it's not going to be 7 offset by someone who's -- who's living in Connecticut 8 and in Texas or a snowbird that's come down or someone 9 from another country that's here. We want our eligible 10 voters, all eligible voters, to vote.</p> <p>11 Q. (By Ms. Faransso) Do you believe that Senate 12 Bill 14 was the least restrictive option to be able to 13 achieve the goals that you have just discussed?</p> <p>14 MS. HALPERN: Objection, calls for a legal 15 conclusion.</p> <p>16 A. I think Senate Bill 14 was an acceptable bill 17 modeled after Indiana and Georgia.</p> <p>18 Q. (By Ms. Faransso) Can you imagine sitting here 19 today that a less restrictive version of Senate Bill 14 20 could have achieved the bill -- the goals that you were 21 hoping to achieve through that legislation?</p> <p>22 MS. HALPERN: Objection, relevance. 23 Objection, calls for speculation.</p> <p>24 A. I suppose I can sit here and speculate on what 25 I could have done differently in college to improve my</p>	<p style="text-align: right;">235</p> <p>1 So although my goal would have been not to 2 have anyone that was negatively affected or had a hard 3 time getting voter ID, my point is that in Texas, during 4 the pendency of -- of our work on Senate Bill 362 and 5 then Senate Bill 14, there wasn't any data to get. It 6 didn't exist in a form that I'm aware of how we could 7 get the data and compare.</p> <p>8 Once -- once we -- on or about January 9 27th, when we got some preliminary information from the 10 -- from -- from one of these sources, in which we -- it 11 was stated that some 678,000 to 844,000 of the -- of the 12 12.6 million registered voters may not have been issued 13 a driver's license or ID by the DPS. I'm not sure that 14 DPS knew if that was correct, if that many had not 15 received. I don't know. That obviously doesn't include 16 those with military ID. We've got 287,000 active duty 17 military, some of which are Texas residents. I don't 18 know if that included those numbers. If you count the 19 spouses, I don't know if it counted those with 20 additional military. I don't know if it counted those 21 with passports. So -- so these numbers, I think, when 22 you factor in other elements, are starting to become 23 diminutive, and I think over time are.</p> <p>24 MS. HALPERN: Let the record reflect that 25 the -- the Governor was testifying from Exhibit --</p>
<p style="text-align: right;">234</p> <p>1 grade point average 1/10th of 1 percent but -- I'm sure 2 there are things which we could have done. But -- but I 3 charged Senator Fraser, the Senators, with coming 4 together on a fair bill that could be modeled after 5 Indiana and Georgia in general, not necessarily exactly, 6 because the two bills were different, but one which we 7 could feel good about that would not discriminate 8 against anyone and still be upheld as constitutional 9 under the -- by the U.S. Supreme Court.</p> <p>10 Q. (By Ms. Faransso) You also testified today 11 that you -- and again, correct me if I'm wrong or 12 mischaracterizing, but that you were not aware of any 13 data in Indiana and Georgia which have photo ID of 14 people being unable to access the ID they needed under 15 those bills; is that right?</p> <p>16 A. That is what I said because that's my 17 understanding. If I'm not wrong.</p> <p>18 Q. Is the lack of reports of people being able to 19 access the IDs they needed in Indiana and Georgia, is 20 that the measure of whether a photo ID bill is lawful?</p> <p>21 A. In the Indiana case or the Crawford case, as a 22 layman reading the decision, if the photo voter ID did 23 more for the common good, even if there were a small 24 number of people affected, then that was permissible 25 under the law, if I read it correctly.</p>	<p style="text-align: right;">236</p> <p>1 MS. FARANSO: 27, I believe. 2 MS. HALPERN: -- 27. 3 THE WITNESS: 27. 4 MS. FARANSO: Thank you. 5 MS. HALPERN: Referring to numbers from 6 Exhibit 27. 7 MS. FARANSO: Thank you. 8 Q. (By Ms. Faransso) Would your view of the 9 impact of the Indiana and Georgia laws on voters in 10 Indiana and Georgia have been different if you knew 11 whether those laws made it more difficult for eligible 12 registered voters to participate in elections?</p> <p>13 MS. HALPERN: Objection, vague.</p> <p>14 A. The -- the Secretary of State of Indiana, and I 15 believe the Deputy Secretary of State from Georgia, have 16 testified that their photo voter bills did not make it 17 harder for -- for people from Indiana, people from 18 Georgia and minorities to be able to get ID and vote. 19 And that was the testimony that was made.</p> <p>20 Plus, not to just rely on that, we went 21 out and found a number of studies, I believe three, that 22 had done careful analytic study and come to the same 23 conclusion that states with photo voter ID do not reduce 24 voter turnout. As a matter of fact, in a number of 25 cases, they increase it.</p>

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<p style="text-align: right;">237</p> <p>1 Q. (By Ms. Faransso) What was the basis for the</p> <p>2 testimony by the officials from Indiana and Georgia that</p> <p>3 their laws had not made it more difficult for eligible</p> <p>4 registered voters to vote in elections?</p> <p>5 MR. BRISSENDEN: Objection, form.</p> <p>6 <b>A. Other than -- that's what they said?</b></p> <p>7 Q. (By Ms. Faransso) Let me -- let me rephrase.</p> <p>8 <b>A. Because I'm not following you.</b></p> <p>9 Q. Was the basis for the testimony from the</p> <p>10 officials from Georgia and Indiana the fact that</p> <p>11 minority turnout had increased or decreased?</p> <p>12 <b>A. All I can report is what I heard, that the</b></p> <p>13 <b>election officials from Indiana and Georgia said that</b></p> <p>14 <b>the existence of their photo voter IDs did not diminish</b></p> <p>15 <b>minority turnout; in fact, most cases, in most areas of</b></p> <p>16 <b>their state, increased it --</b></p> <p>17 Q. And I --</p> <p>18 <b>A. -- because people felt more confidence --</b></p> <p>19 Q. Thank you.</p> <p>20 <b>A. -- that their vote counted.</b></p> <p>21 Q. And just to be clear, though, none of the</p> <p>22 testimony from officials in Indiana or Georgia looked</p> <p>23 into the burdens that voters experienced in attempting</p> <p>24 to vote in those states?</p> <p>25 <b>A. Well, by definition, if more people turn out,</b></p>	<p style="text-align: right;">239</p> <p>1 <b>A. One was a study by the Heritage Foundation, and</b></p> <p>2 <b>two others were by university professors that -- and I</b></p> <p>3 <b>can get you the names on those.</b></p> <p>4 Q. And you personally reviewed those studies?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. And as we discussed earlier, the laws in</p> <p>7 Indiana and Georgia permit more forms of photo ID than</p> <p>8 Senate Bill 14, correct?</p> <p>9 <b>A. Correct.</b></p> <p>10 Q. Do you believe it's a fair comparison to look</p> <p>11 at the turnout in Georgia and Indiana and -- and</p> <p>12 extrapolate from those the experiences in those states</p> <p>13 to Texas, given the differences in the laws that have</p> <p>14 been passed in Texas and Georgia and Indiana?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. And why is that?</p> <p>17 <b>A. Why is it not? They're substantially similar.</b></p> <p>18 <b>They're not exactly similar, but they're substantially</b></p> <p>19 <b>similar.</b></p> <p>20 <b>Not only that, we've made a real effort in</b></p> <p>21 <b>Texas to mitigate any adverse effect; first, by spending</b></p> <p>22 <b>\$2 million on voter education. Secondly, by -- by</b></p> <p>23 <b>funding some 25 different DPS voter registration vans</b></p> <p>24 <b>that -- I'm sorry, strike voter registration -- but 25</b></p> <p>25 <b>DPS vans that -- that could go out in the neighborhoods,</b></p>
<p style="text-align: right;">238</p> <p>1 <b>then the burdens are not too difficult for them in fact</b></p> <p>2 <b>to meet those burdens and to vote.</b></p> <p>3 Q. Would you agree that it's possible that a</p> <p>4 person may cast a ballot but in the process of casting a</p> <p>5 ballot have experienced significant burdens or have</p> <p>6 experienced burdens in attempting to vote?</p> <p>7 MR. BRISSENDEN: Objection, form.</p> <p>8 <b>A. That's a hypothetical question.</b></p> <p>9 Q. (By Ms. Faransso) Did you personally review</p> <p>10 any analysis of the burdens that voters in Indiana and</p> <p>11 Georgia experienced in attempting to cast ballots in</p> <p>12 those states?</p> <p>13 <b>A. Well --</b></p> <p>14 MR. BRISSENDEN: Objection, form, assumes</p> <p>15 facts not in evidence.</p> <p>16 <b>A. Well, you're implying that there were</b></p> <p>17 <b>significant burdens, and I'm not aware from any of the</b></p> <p>18 <b>testimony that there was.</b></p> <p>19 Q. (By Ms. Faransso) Let's talk a little bit</p> <p>20 about that minority turnout in Georgia and Indiana that</p> <p>21 we've been discussing. You mentioned three studies that</p> <p>22 were separate and apart from the testimony you received</p> <p>23 from officials from those states.</p> <p>24 <b>A. Right.</b></p> <p>25 Q. What were those studies?</p>	<p style="text-align: right;">240</p> <p>1 <b>go into rural areas, to facilitate the issuance of the</b></p> <p>2 <b>election identification cards. Plus, we've funded</b></p> <p>3 <b>millions of dollars to enlarge DPS driver's license</b></p> <p>4 <b>facilities and have them open on Saturdays.</b></p> <p>5 Q. So is it your testimony that Senate Bill 14 is</p> <p>6 substantially similar to the laws in Georgia and</p> <p>7 Indiana?</p> <p>8 <b>A. Similar, yes.</b></p> <p>9 Q. Substantially similar or similar?</p> <p>10 MS. HALPERN: Objection, vague.</p> <p>11 <b>A. I think it's similar.</b></p> <p>12 Q. (By Ms. Faransso) Okay. Are there other</p> <p>13 factors that can cause voter turnout to increase or</p> <p>14 decrease from election to election?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Are -- what are some of those factors?</p> <p>17 <b>A. Popularity of candidates, the then current</b></p> <p>18 <b>economic condition, are two that quickly come to mind.</b></p> <p>19 Q. And specifically, could there be any reasons to</p> <p>20 explain increased minority turnout in Georgia and</p> <p>21 Indiana other than the substance of the photo ID laws in</p> <p>22 those states?</p> <p>23 MS. HALPERN: Objection, calls for</p> <p>24 speculation.</p> <p>25 <b>A. To -- to answer yes, I would have to speculate,</b></p>

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<p style="text-align: right;">241</p> <p>1 and the only thing I know for sure is what the election 2 officials told me, that -- that, like Texas, voters want 3 to have more confidence that their vote counts. When 4 they don't have confidence that their vote counts around 5 the country, fewer voters vote. I've seen that in 6 Texas. I know from my own experience over six to eight 7 years, traveling the state of Texas, talking in total to 8 thousands of different people who were preoccupied on 9 wanting a Voter ID bill passed so they could feel like 10 their vote counted. It's very important to people. 11 Q. (By Ms. Faransso) You talked today about polls 12 in Texas showing that -- showing Texans' views on photo 13 ID laws. Which specific polls were you referring to? 14 A. I believe I mentioned it earlier, but let me 15 repeat. I said a 2008 Rasmussen poll and two -- two 16 University of Texas polls, one in 2008, one in 2009, is 17 the -- I don't -- that showed -- showed in all three a 18 super majority, meaning over two-thirds. 19 Q. And did you review the polls or just hear about 20 them? 21 A. No, I looked at them. 22 Q. How -- do you know if these polls ensured that 23 respondents came from a representative sample of the 24 population? 25 MR. BRISSENDEN: Objection, form.</p>	<p style="text-align: right;">243</p> <p>1 as well. 2 (Exhibit 36 marked for identification.) 3 Q. (By Ms. Faransso) And does that 2008 poll look 4 familiar to you? 5 A. Yes, it does. 6 Q. Okay. And for the record, this also is taken 7 from the University of Texas, Texas Tribune website, 8 that includes the polling data. 9 A. And I looked at a Rasmussen poll, which is a 10 running average of other polls -- 11 Q. Okay. 12 A. -- that showed similar numbers. 13 Q. If you could take a look at -- I believe it's 14 Exhibit 36, the last -- the 2008 poll? 15 A. Uh-huh. 16 Q. If you could turn to the very last page of that 17 document. 18 A. Uh-huh. 19 Q. And it says -- can you please read that, take a 20 moment to review that? 21 A. "Broken down by race, support for legislation 22 requiring a photo identification" -- 23 Q. Actually, it's the very last page. I believe 24 there's a page on the back, and if you could take a 25 moment to just review that.</p>
<p style="text-align: right;">242</p> <p>1 A. My understanding, and I have some experience 2 with polling -- 3 Q. (By Ms. Faransso) Sure. More than me, I'm 4 sure. 5 A. Well, it's a difficult area. 6 My understanding is, in all three cases, 7 these were scientifically statistical samples. 8 Q. Do you know whether the polls ensured that 9 respondents included low income respondents? 10 A. My understanding is that these were -- were all 11 scientifically statistical where a cross-section of the 12 state was sampled. 13 Q. If you don't mind, let's take a look at some of 14 the polls I believe you're referring to. 15 (Exhibit 35 marked for identification.) 16 Q. (By Ms. Faransso) Does this poll look familiar 17 to you? 18 A. No. 19 Q. I can represent to you that this is taken from 20 the University of Texas, Texas Tribune poll. Is that 21 one of the polls that you were referring to earlier? 22 A. It is, but I was looking at -- at earlier polls 23 that occurred in the 2008, 2009, 2010 time period. 24 Q. Okay. And just for the record, this particular 25 poll is dated February 2011. Take a look at a 2008 poll</p>	<p style="text-align: right;">244</p> <p>1 A. "11 percent of respondents answered 'don't 2 know' to this question. Question asked in two parts. 3 First" -- 4 MS. HALPERN: Slow down. Slow down. The 5 reporter has to write that. 6 A. Excuse me. "11 percent of respondents answered 7 'don't know' to this question. Question asked in two 8 parts. First, respondents were asked whether or not 9 they support a law requiring individuals to present a 10 government-issued photo ID in order to be permitted to 11 vote. Then, they were asked to gauge their strength of 12 their support or opposition." 13 Q. (By Ms. Faransso) Do you recall that this was 14 a question asked in this particular poll? 15 A. That's the first time I've seen that statement. 16 Q. Okay. Does -- is it fair to say that this poll 17 then asked whether respondents would support a law 18 requiring individuals to present a government-issued 19 photo ID in order to be permitted to vote? 20 A. I can only assume that it does because the 21 similar poll done three years later uses those words. 22 Q. Right. And we'll take a look at that in just a 23 moment. 24 Does this -- looking at the 2008 poll that 25 is Exhibit 36, does this question appear to define what</p>

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<p style="text-align: right;">245</p> <p>1 a government-issued photo ID is?</p> <p>2 <b>A. The statement says what it says by -- by</b></p> <p>3 <b>stating that a government-issued ID is required.</b></p> <p>4 Q. And looking at the 2011 poll that you have in</p> <p>5 front of you, which is Exhibit 35 --</p> <p>6 <b>A. It's the same wording.</b></p> <p>7 Q. Same wording, correct?</p> <p>8 <b>A. To present a government-issued photo ID.</b></p> <p>9 Q. Thank you. So this, again, does not define</p> <p>10 what a government-issued photo ID is?</p> <p>11 <b>A. That's right.</b></p> <p>12 Q. So in looking at both of these polls, from</p> <p>13 February 2011 and July of 2008, neither poll defines or</p> <p>14 limits the term government-issued photo ID, correct?</p> <p>15 MS. HALPERN: Objection, asked and</p> <p>16 answered.</p> <p>17 MR. BRISSENDEN: Objection, form.</p> <p>18 MS. FARANSO: Just trying to confirm for</p> <p>19 the record.</p> <p>20 Q. (By Ms. Faransso) Correct?</p> <p>21 <b>A. You're going to have to ask me again, because</b></p> <p>22 <b>I'm -- the voters were asked -- these voters were asked</b></p> <p>23 <b>whether or not they were for or against being required</b></p> <p>24 <b>to present a government-issued photo ID before they</b></p> <p>25 <b>could vote.</b></p>	<p style="text-align: right;">247</p> <p>1 respondent would interpret a government-issued photo ID?</p> <p>2 <b>A. That's humorous. Of course. Of course. A --</b></p> <p>3 <b>an individual, I believe, would interpret a</b></p> <p>4 <b>government-issued photo ID to be a fair and</b></p> <p>5 <b>representative one. Again, instead of "a"</b></p> <p>6 <b>government-issued photo ID in Senate Bill 14, we have</b></p> <p>7 <b>five, four or five.</b></p> <p>8 Q. All right. I'd also like to show you just one</p> <p>9 additional poll, also from the University of Texas, the</p> <p>10 Texas Tribune.</p> <p>11 (Exhibit 37 marked for identification.)</p> <p>12 Q. (By Ms. Faransso) You've been handed what's</p> <p>13 been marked Exhibit 37. And this is dated October 2012.</p> <p>14 And as you see there, it has the same wording as the</p> <p>15 previous polls, correct?</p> <p>16 <b>A. Uh-huh.</b></p> <p>17 Q. If you turn to the very last page, which breaks</p> <p>18 down the responses by race.</p> <p>19 <b>A. Uh-huh.</b></p> <p>20 Q. Do you see that the percentage of respondents</p> <p>21 that agree with requiring presentation of a</p> <p>22 government-issued photo ID for the African American</p> <p>23 population of respondents is 33 percent?</p> <p>24 <b>A. I do.</b></p> <p>25 Q. And if you look back at the February 2011 poll,</p>
<p style="text-align: right;">246</p> <p>1 Q. Okay.</p> <p>2 <b>A. And this is showing a super majority across the</b></p> <p>3 <b>board of our ethnicity were in favor.</b></p> <p>4 Q. Okay. And Senate Bill 14 does not include all</p> <p>5 forms of government-issued photo ID, does it?</p> <p>6 <b>A. No, it does not.</b></p> <p>7 Q. There are more government-issued photo IDs than</p> <p>8 are included in SB 14?</p> <p>9 MS. HALPERN: Objection, asked and</p> <p>10 answered.</p> <p>11 <b>A. And I don't mean to be argumentative, Counsel,</b></p> <p>12 <b>but I think this is already -- we've already discussed</b></p> <p>13 <b>this. The -- these two polls, and I'm not at all</b></p> <p>14 <b>suggesting that they're -- that you should agree with</b></p> <p>15 <b>them, but all I'm saying is that, that my experience</b></p> <p>16 <b>over the last decade and third-party polling which I've</b></p> <p>17 <b>seen all indicate the majority of Texans are in favor of</b></p> <p>18 <b>having to present a government-issued photo ID before</b></p> <p>19 <b>they're allowed to vote. And it says "a" government-</b></p> <p>20 <b>issued photo ID. So although there's not specificity in</b></p> <p>21 <b>the question as to which one, it's one to be picked out</b></p> <p>22 <b>by -- through the process in the legislature. And we've</b></p> <p>23 <b>-- we have four or five that are allowed.</b></p> <p>24 Q. (By Ms. Faransso) Is it fair to say that</p> <p>25 there's no way to tell from this poll how a particular</p>	<p style="text-align: right;">248</p> <p>1 which I believe was Exhibit 35?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And look at the very last page of that</p> <p>4 particular poll.</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. The percentage of African American respondents</p> <p>7 who believed that voters should be required to present a</p> <p>8 government-issued photo ID was 63 percent.</p> <p>9 <b>A. That is correct.</b></p> <p>10 Q. Does the drop from 63 percent to 33 percent</p> <p>11 among the African American population surprise you?</p> <p>12 <b>A. No. It's because of the disingenuous</b></p> <p>13 <b>disinformation provided by the Department of Justice and</b></p> <p>14 <b>the lawsuits that have been filed in Texas.</b></p> <p>15 Q. Could there be any other explanation for the</p> <p>16 drop in support among the African American population?</p> <p>17 MS. HALPERN: Objection, calls for</p> <p>18 speculation.</p> <p>19 <b>A. And the point I was making earlier was that</b></p> <p>20 <b>during the time period between 2008, 2009, 2010 and</b></p> <p>21 <b>2011, when we were considering Senate Bill 362 and --</b></p> <p>22 <b>and Senate Bill 14, that there was across the board</b></p> <p>23 <b>widespread super majority support, and that's why I felt</b></p> <p>24 <b>that it was important to push for this legislation and</b></p> <p>25 <b>we passed it.</b></p>

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<p style="text-align: right;">249</p> <p>1       <b>Notice that -- that the percentage of</b>  2       <b>Hispanic voters who agree that a government-issued photo</b>  3       <b>ID at the polls should be implemented before they're</b>  4       <b>allowed to vote is actually in this poll, in October of</b>  5       <b>2012, higher than your White population, your Anglo</b>  6       <b>population.</b>  7       Q. (By Ms. Faransso) But these polls do  8       demonstrate that between February 2011 and October 2012,  9       the percentage average of the Black population who  10      supported requirement of a government-issued photo ID in  11      order to vote dropped from 63 to 33 percent, correct?  12      MS. HALPERN: Objection, asked -- asked  13      and answered. The document speaks for itself.  14      Counsel, you've got about a half an hour  15      left on the clock and I am advised that Defendants are  16      going to ask some questions, so.  17      MS. FARANSSO: I'm not worried about  18      timing, so.  19      Let's see. Let's take look at just one  20      more quick poll and then we'll move on.  21      MS. WESTFALL: Before we continue with the  22      exam, I just want to assert our position that the time  23      that the State takes to examine the Governor will not  24      count against our seven hours.  25      MS. HALPERN: No, it will not, and there's</p>	<p style="text-align: right;">251</p> <p>1 Requirement"?  2       A. Yes.  3       Q. Do see that the question says, "Do you favor or  4       oppose requiring a valid photo ID before a person is  5       allowed to vote"?  6       A. Yes.  7       Q. This particular poll question does not define  8       or limit the term "valid photo ID," correct?  9       A. Correct.  10      Q. And you can put that away. We can move on.  11      A. Okay.  12      Q. Earlier today I know we discussed EICs,  13      election identification certificates, so bear with me if  14      I ask any questions that seem repetitive.  15      You are familiar with the cost of  16      underlying documentation --  17      A. Well, just -- just as my nature, and I  18      apologize to Ms. Westfall and to you, but -- but -- but  19      that -- what I said today repeatedly: On third-party  20      polling showing that a super majority of Texans are in  21      favor of a photo voter ID, whether you ask that a valid  22      photo ID or a government-issued photo ID, is what I  23      said, and these are representative of what I had said.  24      Q. Thank you.  25      A. Excuse me. Go ahead.</p>
<p style="text-align: right;">250</p> <p>1 no question about that.  2       MS. WESTFALL: Okay. Thank you.  3       MS. HALPERN: But you have a total of  4       seven hours, and I would save some time to -- or not,  5       but you're on notice now, and she's repeating questions  6       multiple times.  7       MS. WESTFALL: We don't necessarily agree  8       with that position you're stating but --  9       MS. HALPERN: I understand, but that is  10      the position we are stating.  11      MS. FARANSSO: Can you mark this, please?  12      (Exhibit 38 marked for identification.)  13      Q. (By Ms. Faransso) You've been handed what's  14      been marked as Exhibit 38. Does this poll look familiar  15      to you?  16      A. The -- I believe I've seen this poll before.  17      I've seen a -- a poll from Lighthouse.  18      Q. Do you remember that this poll was referenced  19      during the testimony on the debate of Senate Bill 14?  20      A. I believe I remember that.  21      Q. If you look at the third page of the document,  22      the Bates number ending in 9047. The third page, so the  23      front of the second page.  24      A. Uh-huh.  25      Q. On the very bottom it says, "Photo Voter ID</p>	<p style="text-align: right;">252</p> <p>1 Q. So we'll move on to EICs, which we discussed  2       earlier today. And you are familiar with the underlying  3       documentation required to obtain an EIC, correct?  4       A. I believe so.  5       Q. And I believe you and Ms. Westfall discussed  6       some of the costs involved in obtaining some of that  7       documentation, right?  8       A. Well, I think we discussed, or rather I  9       discussed, my testimony reflects that there -- there is  10      not a cost in obtaining the -- the election  11      identification card from the DPS. In the past, there  12      was a cost to obtain a birth certificate as one example  13      of the proof. And that, through -- through the  14      regulatory implementation of Senate Bill 14, as I made  15      reference to repeatedly, has been eliminated at some  16      cost to the State, from \$22 down to either zero -- and  17      don't ask me why, why this was done, it sounds very  18      strange to me -- zero or up to a \$1.80 for the  19      Comptroller and another \$1.20 for two other agencies.  20      \$3, so...  21      Q. And that reduction in the cost of the birth  22      certificate occurred during the regulatory  23      implementation of the bill following its passage?  24      A. That's right.  25      Q. Are you aware at the time that Senate Bill 14</p>



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<p style="text-align: right;">253</p> <p>1 was passed that 80 -- approximately 80 counties lacked 2 DPS offices in Texas?</p> <p>3 <b>A. I knew that when we passed the bill,</b> 4 <b>approximately 80 -- 80 rural counties did not have DPS</b> 5 <b>offices.</b></p> <p>6 Q. And you mentioned earlier some discussions with 7 DPS during the pendency of Senate Bill 14. I just want 8 to understand a little bit more about what kinds of 9 discussions you had -- your office had with DPS. Did 10 you discuss the availability of public transit to DPS 11 offices throughout the state of Texas?</p> <p>12 <b>A. I discussed with the DPS the continuing concern</b> 13 <b>with crowding in Texas driver's license offices. And my</b> 14 <b>conversations with the -- with the DPS increased after</b> 15 <b>my wife spent three hours in line one day. And after</b> 16 <b>several conversations, we have -- we had an agreement to</b> 17 <b>expand a number of the facilities, add more people, so</b> 18 <b>that people could obtain their driver's license or, as</b> 19 <b>envisioned, the election identification card in a short</b> 20 <b>time period.</b></p> <p>21 <b>I also wanted to make sure that we were</b> 22 <b>going to be able to reach out to rural counties, the 80</b> 23 <b>of which do not represent percentage-wise -- I mean,</b> 24 <b>everybody's important, every Texan is very important --</b> 25 <b>but percentage-wise, not that many people, but still,</b></p>	<p style="text-align: right;">255</p> <p>1 Q. And forgive me for not being terribly familiar 2 with how executive agencies function and --</p> <p>3 <b>A. It's like Washington. In other words, it's not</b> 4 <b>like -- but more efficient. It's not like we've got to</b> 5 <b>pass a 2,000-page bill and then find out what's in it.</b> 6 <b>And it's not like the last three years have been spent</b> 7 <b>trying to implement the bill through the regulatory</b> 8 <b>agencies. But there are certain details that we leave</b> 9 <b>up to work out with our regulatory agencies. And I'm</b> 10 <b>proud that the -- that the Health and Human Services</b> 11 <b>eliminated the cost on birth certificates, because I</b> 12 <b>want more people to vote rather than less. I'm glad</b> 13 <b>that the Department of Public Safety can implement our</b> 14 <b>election identification cards for free, because I want</b> 15 <b>more people to vote rather than less.</b></p> <p>16 Q. Thank you. And my question for you is a simple 17 one. What would you have done if DPS was not able to 18 implement the steps that you discussed with them during 19 the pendency of SB 14?</p> <p>20 MS. HALPERN: Objection, calls for 21 speculation. Objection, relevance. Objection, assumes 22 facts not in evidence. Objection, and the other ten 23 objections I can think of to what I think is a really 24 bad question, but you can try to answer it.</p> <p>25 MS. WESTFALL: Objection to the sidebar.</p>
<p style="text-align: right;">254</p> <p>1 <b>how are we going to address these concerns. And -- and</b> 2 <b>in the 2012 fiscal year, the DPS did not -- did not have</b> 3 <b>the funds to address it. But in the last year, they</b> 4 <b>have been able to address it through funding we made in</b> 5 <b>2013 on something I wanted, a strong outreach, in</b> 6 <b>addition to \$2 million from the Secretary of State's</b> 7 <b>Office on education reform. And at last count -- I</b> 8 <b>believe there are more today -- but the last count that</b> 9 <b>I made, we had 25 mobile vans that were moving around</b> 10 <b>the state.</b></p> <p>11 Q. And you discussed the mobile vans --</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. -- with DPS during the pendency of SB 14?</p> <p>14 <b>A. Yes, and after it was passed.</b></p> <p>15 Q. And Senate Bill 14 does not include any 16 provisions with respect to expanding existing DPS 17 facilities or adding mobile units to serve the rural 18 areas, correct?</p> <p>19 <b>A. Again, Counsel, it's -- it's normally the norm</b> 20 <b>rather than the exception to implement details through</b> 21 <b>the regulatory agencies that implement. And the DPS has</b> 22 <b>-- has done what I just shared with you. And the</b> 23 <b>Department of Health and Human Services has worked with</b> 24 <b>local jurisdictions and has reduced the cost on birth</b> 25 <b>certificates.</b></p>	<p style="text-align: right;">256</p> <p>1 THE WITNESS: Objection sidebar?</p> <p>2 MS. HALPERN: She's objecting to my 3 comments.</p> <p>4 THE WITNESS: Oh.</p> <p>5 MS. HALPERN: It's getting late in the 6 day.</p> <p>7 <b>A. Well, first of all, I don't understand your</b> 8 <b>question because we did what I said we were going to do.</b> 9 <b>I don't understand your question because the agencies</b> 10 <b>did what we asked them in the legislature. And I</b> 11 <b>suppose, if I'm going to speculate if the agencies</b> 12 <b>hadn't done what they said we were going to do -- what</b> 13 <b>they were going to do, then we would have addressed it</b> 14 <b>through additional legislation in 2013.</b></p> <p>15 Q. (By Ms. Faransso) Did you have any concerns 16 that individuals with low income would face burdens in 17 obtaining an EIC in Texas?</p> <p>18 <b>A. No, Counsel, because the EIC was free, so</b> 19 <b>individuals with low incomes -- and that's -- were</b> 20 <b>specifically targeted to make it easy for them to get</b> 21 <b>identification so they could vote.</b></p> <p>22 Q. Aside from the cost of underlying documentation 23 to obtain an EIC, were you concerned that low-income 24 individuals would have to pay costs to travel to obtain 25 an EIC?</p>

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<p style="text-align: right;">257</p> <p>1 <b>A. No, because that's an individual</b>  2 <b>responsibility. Our bus system works in -- in most</b>  3 <b>large cities. Most people have relatives who have</b>  4 <b>driver's license, if they don't have a driver's license</b>  5 <b>and can drive. But that's an individual responsibility</b>  6 <b>to get to a centrally located location and get your free</b>  7 <b>voter ID so you can vote.</b></p> <p>8 Q. Would you agree that for a voter who lived in a  9 remote area in Texas that did not have a DPS office  10 located in the county, that the farther they have to  11 travel to obtain an EIC, the less likely they are to  12 obtain one?</p> <p>13 MR. BRISSENDEN: Objection, form, calls  14 for speculation.</p> <p>15 MS. HALPERN: Objection, assumes facts not  16 in evidence.</p> <p>17 <b>A. Counsel, I have had many conversations with</b>  18 <b>both Democrat senators and Republican senators about</b>  19 <b>that, and in our rural counties in which there aren't</b>  20 <b>DPS driver's license offices, virtually everyone, not</b>  21 <b>everyone, but virtually everyone has a driver's license</b>  22 <b>because they can't get around without one. But be that</b>  23 <b>as it may, that's why we have now, at last count, 25</b>  24 <b>mobile vans going around the state to make sure that</b>  25 <b>anyone who wants a -- either a driver's license or an</b></p>	<p style="text-align: right;">259</p> <p>1 Q. (By Ms. Faransso) Are you aware that during  2 the preclearance process the State of Texas reported  3 that around 795,000 registered voters did not possess a  4 driver's license?</p> <p>5 <b>A. No, but that would be somewhat consistent with</b>  6 <b>-- with the information that we talked about earlier.</b></p> <p>7 Q. Okay.</p> <p>8 MS. HALPERN: Don't write on the exhibits.  9 THE WITNESS: Oh, don't write on the  10 exhibits?</p> <p>11 MS. HALPERN: No.  12 THE WITNESS: Okay. Now she tells me.</p> <p>13 Q. (By Ms. Faransso) Sir, are you aware of a  14 number of EICs that have been issued?</p> <p>15 <b>A. No. How many?</b></p> <p>16 Q. Are you aware that as of February 2014, 260  17 EICs were issued?</p> <p>18 <b>A. And I've asked staff about this. I don't know</b>  19 <b>whether it reflects that not many people don't have</b>  20 <b>acceptable photo voter ID or whether we need to</b>  21 <b>publicize this more. I don't know the answer.</b></p> <p>22 Q. Thank you for your testimony.</p> <p>23 <b>A. Thank you.</b></p> <p>24 MS. FARANSO: Pass the witness.  25 THE WITNESS: Hi.</p>
<p style="text-align: right;">258</p> <p>1 <b>election identification card can get one.</b></p> <p>2 Q. Do you believe that Senate Bill 14 burdens  3 anybody's right to vote?</p> <p>4 <b>A. You're asking me to speculate. It's almost a</b>  5 <b>hypothetical question. I am sure somebody somewhere has</b>  6 <b>been burdened. Now we have to get into the relative</b>  7 <b>analysis of how much they've been burdened. But again,</b>  8 <b>I haven't heard of complaints. I haven't heard of</b>  9 <b>concerns in Texas from the four elections that we've run</b>  10 <b>under Senate Bill 14 of people not being able to gain</b>  11 <b>access. And I haven't heard anything from Ms. Westfall,</b>  12 <b>I haven't heard anything from you, about people that --</b>  13 <b>that are having a problem getting acceptable photo voter</b>  14 <b>ID. If there are cases, then I'd love to know about it</b>  15 <b>because I want to address it. I want to make sure</b>  16 <b>everybody has the chance to vote who wants to vote. I</b>  17 <b>want to see more people vote.</b></p> <p>18 Q. Do you recall during the debate on adding the  19 EIC provision that some senators raised concerns about  20 the burdens associated with obtaining an EIC?</p> <p>21 <b>A. They may have, but I don't remember the</b>  22 <b>specific debate.</b></p> <p>23 MS. FARANSO: Actually, if we could take  24 a brief break for a couple of minutes.  25 (Recess from 6:44 to 6:50 p.m.)</p>	<p style="text-align: right;">260</p> <p>1 MS. KORGAONKAR: Hi, Mr. Dewhurst.  2 EXAMINATION</p> <p>3 BY MS. KORGAONKAR:</p> <p>4 Q. I'd just like to turn your attention for one  5 minute to Exhibit 14.</p> <p>6 <b>A. 14.</b></p> <p>7 Q. You looked at it seems like a lifetime ago.  8 MS. HALPERN: I'll help you find it.  9 THE WITNESS: Thank you:</p> <p>10 Q. (By Ms. Korgaonkar) And I'd to focus your  11 attention on the page marked TX00087008.</p> <p>12 MS. HALPERN: Hold on. He does not have  13 it yet.</p> <p>14 MS. KORGAONKAR: I apologize.</p> <p>15 MS. HALPERN: Counsel, which version is  16 this? The introduced version?</p> <p>17 MS. KORGAONKAR: No, it's not SB 14. It's  18 Exhibit 14.</p> <p>19 MS. HALPERN: Right. And what is it?</p> <p>20 MS. KORGAONKAR: It is an e-mail from  21 Mr. Hebert to Janice McCoy dated March 4th.</p> <p>22 THE WITNESS: We now have it, Counsel.</p> <p>23 Q. (By Ms. Korgaonkar) Great. If you could look  24 at the second page of the document. It's entitled --  25 THE REPORTER: I'm sorry, I can't hear</p>

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<p style="text-align: right;">261</p> <p>1 you.</p> <p>2 Q. (By Ms. Korgaonkar) If you could just look at</p> <p>3 the second page of the document which is entitled,</p> <p>4 "Reasons to Support SB 362 As Filed."</p> <p>5 A. Yes.</p> <p>6 Q. I want to draw your attention to item 1.</p> <p>7 A. Yes.</p> <p>8 Q. The second sentence in it. "There is less</p> <p>9 chance of disenfranchising elderly, poor or minority</p> <p>10 voters." And earlier when Ms. Westfall asked you about</p> <p>11 that sentence, you disagreed with the premise; is that</p> <p>12 right?</p> <p>13 A. That is correct.</p> <p>14 Q. Okay. And is it fair to say that you would</p> <p>15 similarly reject such a premise as construed towards SB</p> <p>16 14?</p> <p>17 A. Yes.</p> <p>18 Q. Put differently: Do you believe that minority</p> <p>19 voters are disproportionately disenfranchised by SB 14?</p> <p>20 A. Now let's go back. Whoa, whoa. I think -- I</p> <p>21 think you're -- either I'm misunderstanding you 180</p> <p>22 percent or you're misunderstanding me. What I thought</p> <p>23 you just got through saying was that -- that did I</p> <p>24 disagree with this statement, "There's less chance of</p> <p>25 disenfranchising." Okay. All right. I think -- I</p>	<p style="text-align: right;">263</p> <p>1 If it were proven that minority voters are</p> <p>2 disproportionately disenfranchised by SB 14, would that</p> <p>3 be problematic in your view?</p> <p>4 MR. BRISSENDEN: Objection, form, facts</p> <p>5 not in evidence -- assuming facts not in --</p> <p>6 A. You're asking a hypothetical question.</p> <p>7 MR. BRISSENDEN: -- evidence.</p> <p>8 A. There's -- there's no evidence -- there's no</p> <p>9 evidence that they are. It was not my intention, nor is</p> <p>10 it ever to disenfranchise anyone. I've said it so many</p> <p>11 times, I hope you heard me. But my objective is to</p> <p>12 increase voter turnout by everyone. So if, in fact,</p> <p>13 there was some detail, which I don't think Senate Bill</p> <p>14 14 could disenfranchise elderly, poor or minority with</p> <p>15 the safeguards that we have in the bill, but if there</p> <p>16 was some element that we need to discuss, then -- then</p> <p>17 I -- I for one would be quite willing to do that.</p> <p>18 Q. (By Ms. Korgaonkar) I appreciate that. And</p> <p>19 the question was a little bit different.</p> <p>20 A. Sure.</p> <p>21 Q. The question was instead, and I'll try to</p> <p>22 rephrase it: If it were shown that voters of color are</p> <p>23 disproportionately lacking any of the forms of ID</p> <p>24 required by SB 14, in your opinion would that be</p> <p>25 problematic?</p>
<p style="text-align: right;">262</p> <p>1 think this is the same confusion that I may have put</p> <p>2 myself into when I was visiting with Ms. Westfall.</p> <p>3 First of all, I don't believe that either bill, Senate</p> <p>4 Bill 362 or Senate Bill 14, disenfranchises elderly,</p> <p>5 poor or minority voters. I don't believe that. And I</p> <p>6 don't believe that for all -- and I repeated it so many</p> <p>7 times, if I say it one more time, Ms. Westfall is likely</p> <p>8 to throw something at me. All right. She's got it</p> <p>9 memorized what I'm going to say. So I don't believe</p> <p>10 that either -- either of these two bills, including</p> <p>11 Senate Bill 14, disenfranchises elderly, poor or</p> <p>12 minority voters. The reason I say that is because,</p> <p>13 again, and I'm repeating, but we've had four elections</p> <p>14 under Senate Bill 14, and I'm not aware of -- of</p> <p>15 complaints about difficulty or lack of appropriate photo</p> <p>16 voter ID that voters have tried to obtain but couldn't.</p> <p>17 And as a matter of fact, to make my point, the last</p> <p>18 question by counsel, by your cocounsel, was that only</p> <p>19 200 -- 250 election identification certificates have</p> <p>20 been issued by the DPS. That's -- that surprises</p> <p>21 me. I'm hoping it means that everyone has acceptable</p> <p>22 ID. If not, then we need to continue the publicity of</p> <p>23 this to make sure that people take -- take access.</p> <p>24 Q. Understood. And thank you for your</p> <p>25 clarification.</p>	<p style="text-align: right;">264</p> <p>1 MR. BRISSENDEN: Same objection.</p> <p>2 A. Well, Counsel, you're not asking the full</p> <p>3 question, because I have to object to that question. If</p> <p>4 people of color, to use your words, are</p> <p>5 disproportionately lacking acceptable photo voter ID and</p> <p>6 it's an undue burden for them to go get that, which I</p> <p>7 think is a reasonable second part of that question, then</p> <p>8 I would be willing to discuss some way that we can make</p> <p>9 it easier.</p> <p>10 Q. (By Ms. Korgaonkar) Is it fair to say that if</p> <p>11 those two parts were present, to you, in your opinion,</p> <p>12 that would be a problem?</p> <p>13 MR. BRISSENDEN: Same objection.</p> <p>14 A. If people --</p> <p>15 MS. HALPERN: Objection, calls for</p> <p>16 speculation.</p> <p>17 A. If people of color are disproportionately</p> <p>18 lacking an acceptable photo voter ID and, for some</p> <p>19 reason completely unknown to me, apparently to you, but</p> <p>20 you're using your hypothetical example, and I'm very</p> <p>21 reluctant to even discuss a hypothetical question, then</p> <p>22 this would be something that would merit some attention</p> <p>23 and a fix on our part.</p> <p>24 Q. (By Ms. Korgaonkar) Thank you, I appreciate</p> <p>25 that.</p>

<p style="text-align: right;">265</p> <p>1 MS. KORGAONKAR: Could we take a quick 2 break? 3 (Recess at 6:58 p.m. to 7:01 p.m.) 4 MS. KORGAONKAR: We're passing the 5 witness. 6 EXAMINATION 7 BY MR. SCOTT: 8 Q. Governor, if I could have a few questions, a 9 little bit of your time. Earlier in your deposition, 10 you said something about you don't recall any specific 11 debate amongst the Democrats or the Senators about some 12 issues, but let's take away the floor debates and let's 13 ask you a more simple question. During the course of 14 consideration and prior to the passage of SB 14, were -- 15 did you have any communication with any Democrats or 16 folks that ultimately were opposed to SB 14? 17 A. Well, since the first day that we considered 18 voter -- Voter ID in the bill that came over from the 19 House in 2000 -- 20 Q. '09, 362? 21 A. No, no, no, bear with me just for a moment. In 22 2005 -- 23 Q. Okay. 24 A. -- House Bill 218? 25 Is that right? 218 came over --</p>	<p style="text-align: right;">267</p> <p>1 bill, House Bill 218, and sent it to us. And I worked 2 with them in the latter part of the session as our 3 Committee on State Affairs considered the bill, passed 4 it out of State Affairs, and it went to the Floor. I 5 was optimistic that we would be able to -- to work 6 something out. 7 The Democrats that I spoke to, in essence, 8 realized that they were on the wrong side of their 9 voters. In fact, several of them used that word, "We're 10 -- I know we're -- we're upside-down on our voters, but 11 this is an issue that will get us a primary opponent if 12 we go along with it." They knew me. They know me. And 13 they knew that my goal was to increase overall voter 14 turnout, because this has been a -- a concern of mine 15 since I first came into the Legislature. 16 Q. Did -- did any of your communications with any 17 of the senators prior to the passage of SB 14 allay any 18 fears you had with regard to perhaps any kind of adverse 19 impact of the passage of SB 14 on any specific minority 20 group? 21 A. The Democrat senators that I spoke with and -- 22 and if you go all the way to 2011, that -- that number 23 that -- we added one more Democrat senator in the 24 Senate, that was Senator Wendy Davis, and I don't recall 25 I spoke to her about voter ID, but I did speak to the</p>
<p style="text-align: right;">266</p> <p>1 MS. HALPERN: I can't help you. 2007. 2 THE WITNESS: 2007, all right. 3 A. Ever since the first -- all right, excuse me. 4 Excuse me. Ever since before the 2007 session in which 5 I knew there was going to be a push in the House and one 6 in the Senate to consider a Voter ID bill, I started 7 multiple conversations with the then 11 Democrat 8 senators in the Senate and -- and worked with them on 9 trying to come up with a compromise bill. And that was 10 the genesis for a number of the nonphoto IDs that were 11 included, the exception that we included even in Senate 12 Bill 17, which we -- excuse me, Senate Bill 14, which we 13 passed out of the Senate in 2011, with an exception for 14 seniors over 70 years old. 15 Q. (By Mr. Scott) What senators -- what 16 Democratic senators do you recall visiting with prior 17 to that SB -- 18 A. I visited with virtually every one of them, 19 every one of them, from Senator Van de Putte, Senator 20 then Shapleigh, Senator Hinojosa, Senator Uresti, 21 Senator Whitmire, Senator Gallegos, Senator Lucio, et 22 cetera. And -- and I continued negotiating with them on 23 a compromise bill, in good faith, in 2006, before the 24 2007 session, during -- during the regular session in 25 2007 when the House took up and passed their voter ID</p>	<p style="text-align: right;">268</p> <p>1 other senators. Their -- their comments to me were much 2 more measured, much -- much more open than what they 3 said on the Floor. 4 Q. Well, in what way? 5 MS. WESTFALL: Objection. Mr. Scott, have 6 these unnamed senators asserted legislative privilege in 7 this matter? 8 MS. HALPERN: I don't know. 9 MR. SCOTT: I guess we could put it under 10 -- it's up to you, if you want to assert the legislative 11 privilege for them, I mean, I guess. 12 MS. WESTFALL: No, I'm not sure whether 13 the Governor can testify about privileged conversations. 14 I'm asking you whether this examination is 15 appropriate -- 16 MS. HALPERN: Somebody -- 17 MS. WESTFALL: -- based on the -- 18 MS. HALPERN: Somebody has to make the 19 objection, Counsel. There's nobody here to do that. If 20 I do make it, then it's going to be under seal just like 21 all his other testimony that you'll be using, so. 22 MR. SCOTT: And from our perspective, we 23 have siloed off where there is a separate group of 24 folks. 25 MR. BRISSENDEN: Aren't we under seal?</p>



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<p style="text-align: right;">269</p> <p>1 Aren't we under seal?</p> <p>2 MR. SCOTT: Are we under seal?</p> <p>3 MS. HALPERN: No, it's not. It's question</p> <p>4 by question.</p> <p>5 MR. SCOTT: I don't know.</p> <p>6 MS. WESTFALL: I'm just -- I'm not -- the</p> <p>7 position has been taken in previous depositions is that</p> <p>8 one -- in the case of previous depositions, a senator</p> <p>9 cannot testify about conversations with another senator</p> <p>10 because, unless it was known that that senator had</p> <p>11 waived legislative privilege, and I'm not sure whether</p> <p>12 that is -- I wanted to raise that issue and make an</p> <p>13 objection on the record --</p> <p>14 MR. SCOTT: Sure.</p> <p>15 MS. WESTFALL: -- to your examination to</p> <p>16 that extent.</p> <p>17 MR. SCOTT: Okay.</p> <p>18 Q. (By Mr. Scott) And so can you answer, if you</p> <p>19 can, Senator -- I mean -- let me reask the question. I</p> <p>20 don't know if I even finished the question.</p> <p>21 So let's -- let's deal with a couple of</p> <p>22 different parts. So specifically, let's take individual</p> <p>23 senators that you recall speaking to prior to the</p> <p>24 passage of SB 14. So specifically, do you recall the</p> <p>25 names of any of the specific senators that you spoke</p>	<p style="text-align: right;">271</p> <p>1 him. So I understood that. I understood that.</p> <p>2 But -- but and I don't know if -- if the</p> <p>3 three opposing counsel will understand this, but at</p> <p>4 least in Texas, it's such a different state from</p> <p>5 Washington, that I consider all these Democrat senators</p> <p>6 friends of mine, and that's why I'm glad you asserted</p> <p>7 privilege and I'm glad this is confidential, because I</p> <p>8 really don't want to hurt anyone. And -- but none of</p> <p>9 them voted for any of our bills. But I -- I went out on</p> <p>10 a limb and told the Republican caucus in -- I believe it</p> <p>11 was the 2009 session, that I was optimistic we could</p> <p>12 work out a consensus, and was I wrong. I could not work</p> <p>13 it out.</p> <p>14 Q. But nevertheless, the SB 14, it sounds like,</p> <p>15 incorporated some of those discussions and negotiations</p> <p>16 you had with some of these Democrats who ended up voting</p> <p>17 against the bill; is that correct?</p> <p>18 A. Some of the provisions in Senate Bill 14 were</p> <p>19 parts of the concessions, the compromises that -- that</p> <p>20 we had discussed with Senator Fraser in order to bring</p> <p>21 on Democrats on board in Senate Bill 362, and some of</p> <p>22 those were retained in Senate Bill 14.</p> <p>23 Q. Now, there is a procedure in the Texas Senate</p> <p>24 today and there was one back during the consideration of</p> <p>25 SB 14 and SB 362 where a senator had the right to add</p>
<p style="text-align: right;">270</p> <p>1 with prior to passage of SB 14 about these discussions</p> <p>2 that you heretofore described in your testimony?</p> <p>3 A. Well, some of the conversations took place</p> <p>4 during the 2009 session and the discussion of Senate</p> <p>5 Bill 362, but they -- and some took place during the</p> <p>6 interim leading up to the 2011 session where we took up</p> <p>7 Senate Bill 14. But I had numerous conversations with</p> <p>8 Senator Eddie Lucio. I had numerous conversations with</p> <p>9 Senator John Whitmire. I had numerous conversations</p> <p>10 with Senator Elliot Shapleigh before he stepped down</p> <p>11 from the Senate. I had numerous conversations with</p> <p>12 Senator West that I can remember. About the fact that</p> <p>13 they were upside-down as far as their voters were</p> <p>14 concerned, and why don't we work together.</p> <p>15 A number of them, I can remember, even</p> <p>16 with Elliott Shapleigh, trying to negotiate with him</p> <p>17 what -- what exceptions we needed. He focused on</p> <p>18 elderly voters needing an exception.</p> <p>19 In the case of Senator Mario Gallegos, who</p> <p>20 I talked to repeatedly, he focused on his grandmother in</p> <p>21 wanting to have an exception for elderly people also.</p> <p>22 On the case of John Whitmire, Senator</p> <p>23 Whitmire, he was not as optimistic that anything could</p> <p>24 be worked out on a consensus basis because it would</p> <p>25 probably, in his words, generate a primary opponent for</p>	<p style="text-align: right;">272</p> <p>1 written comments to the record, the official record,</p> <p>2 after the debate and after the passage of the bill; is</p> <p>3 that correct?</p> <p>4 A. Well, that's true, but it's true for all</p> <p>5 senators. In other words, senators have the right to --</p> <p>6 to notify the Secretary of the Senate within a short</p> <p>7 period of time after adjournment to change their vote,</p> <p>8 as long as it doesn't change the outcome of a particular</p> <p>9 bill. And they have the right to submit written</p> <p>10 comments.</p> <p>11 Q. How does one look at the record and know</p> <p>12 whether someone has submitted those before or after a</p> <p>13 vote is taken, either way?</p> <p>14 A. Well, let me -- let me see if I can answer you</p> <p>15 this way. What was the -- what was the exhibit number</p> <p>16 on the -- on the Senate Journal?</p> <p>17 MS. FARANSSO: For SB 14?</p> <p>18 THE WITNESS: For 362.</p> <p>19 MS. FARANSSO: 12.</p> <p>20 THE WITNESS: Did we see a proceedings?</p> <p>21 Okay. Well, it may be here in 2011. I remember being</p> <p>22 present.</p> <p>23 MS. HALPERN: It's the transcript, not the</p> <p>24 journal.</p> <p>25 THE WITNESS: The transcript. But that's</p>



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<p style="text-align: right;">273</p> <p>1 on 2011.</p> <p>2 <b>A. I remember -- I remember in 2009 being shocked,</b></p> <p>3 <b>and I believe the same thing happened in 2011, but I</b></p> <p>4 <b>remember that -- that upon passing Senate Bill 362 out</b></p> <p>5 <b>of the Senate in the 2009 session, staff brought me a</b></p> <p>6 <b>copy of the journal as amended by comments from a number</b></p> <p>7 <b>of Democrat senators a day or two later, and quite</b></p> <p>8 <b>frankly, I was disappointed. "Hurt my feelings" was too</b></p> <p>9 <b>strong, but I was disappointed in the -- in the tone and</b></p> <p>10 <b>the words that were used by some of the senators.</b></p> <p>11 Q. (By Mr. Scott) Did you -- were you ever able</p> <p>12 to determine why they would have submitted it after the</p> <p>13 debate and after the vote on SB 362?</p> <p>14 <b>A. Sure. This is all for the Department of</b></p> <p>15 <b>Justice. Of course! That's why they were submitting</b></p> <p>16 <b>them. They didn't have the -- they didn't have the --</b></p> <p>17 <b>the -- let me stop there. They -- they chose not to say</b></p> <p>18 <b>it on the Floor of the Senate where we would have</b></p> <p>19 <b>responded to them, but they put it in letters and</b></p> <p>20 <b>submitted it into the journal. I mean, it's not</b></p> <p>21 <b>different from in -- in -- in a letter that Senator</b></p> <p>22 <b>Laticia Van de Putte wrote in either 2009 or 2011 to</b></p> <p>23 <b>Senator Robert Duncan on the Committee of the Whole</b></p> <p>24 <b>objecting to what she felt was a short time line between</b></p> <p>25 <b>Thursday and a Monday afternoon hearing. She copied the</b></p>	<p style="text-align: right;">275</p> <p>1 <b>A. If you --</b></p> <p>2 <b>(Document handed to witness by</b></p> <p>3 <b>Ms. Halpern.)</b></p> <p>4 THE WITNESS: No, it would come after --</p> <p>5 it would come after --</p> <p>6 MS. HALPERN: I think Counsel stated for</p> <p>7 the record that was an excerpt of the journal and not</p> <p>8 the whole thing, so.</p> <p>9 THE WITNESS: Yes. Yes.</p> <p>10 It would come at the end of the -- the</p> <p>11 comments would come at the end of the session during the</p> <p>12 process for adjournment.</p> <p>13 Q. (By Mr. Scott) And that would signify they</p> <p>14 were taken -- the comments were submitted after the</p> <p>15 passage of SB 14?</p> <p>16 <b>A. Yes, if they were taken -- if they were not</b></p> <p>17 <b>contained in the body of the debate. And you can easily</b></p> <p>18 <b>-- sometimes, and I've seen them handled differently</b></p> <p>19 <b>by -- by the Secretary of the Senate's office, sometimes</b></p> <p>20 <b>they're included before the adjournment, but they're --</b></p> <p>21 <b>but they're turned in afterwards. If -- if they are</b></p> <p>22 <b>comments relating to the debate but they're not in the</b></p> <p>23 <b>section of the journal during the debate, then they're</b></p> <p>24 <b>turned in after the session and asked to be printed in</b></p> <p>25 <b>the journal.</b></p>
<p style="text-align: right;">274</p> <p>1 <b>Department of Justice in Washington. So this was all</b></p> <p>2 <b>orchestrated. It's well known among all the Republicans</b></p> <p>3 <b>and the Democrats, because I talked to them about it,</b></p> <p>4 <b>that during these proceedings, they all had third-party</b></p> <p>5 <b>prepared notes. It was all scripted. Everything was</b></p> <p>6 <b>scripted by their lawyers on what they said.</b></p> <p>7 Q. So do you have an opinion as to whether they</p> <p>8 were planning a lawsuit all along in consideration of</p> <p>9 362 and SB 14?</p> <p>10 MS. WESTFALL: Objection, calls for</p> <p>11 speculation.</p> <p>12 Q. (By Mr. Scott) You may answer.</p> <p>13 <b>A. They were certainly preparing their legal</b></p> <p>14 <b>defense against an action by the Texas Senate.</b></p> <p>15 Q. Let's go back to the comments that are placed,</p> <p>16 the written comments by the senators that were placed</p> <p>17 into a journal. Do you recall whether there were</p> <p>18 written comments placed into the journal after the</p> <p>19 debate of -- and passage of SB 14?</p> <p>20 <b>A. I don't remember. I could find out in couple</b></p> <p>21 <b>of minutes, but I don't remember. I know that I was --</b></p> <p>22 <b>I think they just end on the amendments.</b></p> <p>23 Q. Is there something -- how is it that you would</p> <p>24 be able to look at those to determine whether they were</p> <p>25 added after the fact?</p>	<p style="text-align: right;">276</p> <p>1 MR. SCOTT: Governor, thank you for your</p> <p>2 service to the state.</p> <p>3 And I'll pass the witness.</p> <p>4 MS. WESTFALL: We'll go confer.</p> <p>5 MS. HALPERN: Okay.</p> <p>6 (Recess from 7:18 to 7:23 p.m.)</p> <p>7 MS. WESTFALL: We have no further</p> <p>8 questions. Thank you very much for your service and</p> <p>9 your time today.</p> <p>10 THE WITNESS: Well, thank you, thank you</p> <p>11 very much.</p> <p>12 (Deposition concluded at 7:23 p.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>1 CHANGES AND SIGNATURE</p> <p>2 RE: VEASEY, ET AL. VS. PERRY, ET AL.</p> <p>3 PAGE LINE CHANGE REASON</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 I, LIEUTENANT GOVERNOR DAVID DEWHURST, have read</p> <p>21 the foregoing deposition and hereby affix my signature</p> <p>22 that same is true and correct, except as noted above.</p> <p>23 _____</p> <p>24</p> <p>25 LIEUTENANT GOVERNOR DAVID DEWHURST</p>	<p>1 BELINDA ORTIZ, et al., )</p> <p>2 )</p> <p>3 Plaintiffs, )</p> <p>4 )</p> <p>5 VS. ) CIVIL ACTION NUMBER:</p> <p>6 ) 2:13-CV-348(NGR)</p> <p>7 STATE OF TEXAS, et al., )</p> <p>8 )</p> <p>9 Defendants. )</p> <p>10 )</p> <p>11</p> <p>12 REPORTER'S CERTIFICATION</p> <p>13 DEPOSITION OF</p> <p>14 LIEUTENANT GOVERNOR DAVID DEWHURST</p> <p>15 JULY 29, 2014</p> <p>16 I, Chris Carpenter, Certified Shorthand Reporter in</p> <p>17 and for the State of Texas, hereby certify to the</p> <p>18 following:</p> <p>19 That the witness, LIEUTENANT GOVERNOR DAVID</p> <p>20 DEWHURST, was duly sworn by the officer and that the</p> <p>21 transcript of the oral deposition is a true record of</p> <p>22 the testimony given by the witness;</p> <p>23 That the deposition transcript was submitted on the</p> <p>24 _____ day of _____, 2014, to the witness or to the</p> <p>25 attorney for the witness for examination, signature and</p> <p>return to _____,</p> <p>by _____, 2014, and if returned,</p> <p>the original transcript will forwarded to Elizabeth</p> <p>Westfall, the custodial attorney;</p> <p>That the amount of time used by each party at the</p> <p>deposition is as follows:</p> <p>Ms. Westfall: 5 hours, 55 minutes</p>
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<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE SOUTHERN DISTRICT OF TEXAS</p> <p>3 CORPUS CHRISTI DIVISION</p> <p>4 MARC VEASEY, et al., )</p> <p>5 )</p> <p>6 Plaintiff, )</p> <p>7 )</p> <p>8 VS. ) CIVIL ACTION NUMBER:</p> <p>9 ) 2:13-CV-193 (NGR)</p> <p>10 RICK PERRY, et al., )</p> <p>11 )</p> <p>12 Defendants. )</p> <p>13 )</p> <p>14 UNITED STATES OF AMERICA, )</p> <p>15 )</p> <p>16 Plaintiff, )</p> <p>17 )</p> <p>18 VS. ) CIVIL ACTION NUMBER:</p> <p>19 ) 2:13-CV-263 (NGR)</p> <p>20 TEXAS LEAGUE OF YOUNG VOTERS )</p> <p>21 EDUCATION FUND, et al., )</p> <p>22 )</p> <p>23 Plaintiff-Intervenors, )</p> <p>24 )</p> <p>25 TEXAS ASSOCIATION OF HISPANIC )</p> <p>COUNTY JUDGES AND COUNTY )</p> <p>COMMISSIONERS, et al., )</p> <p>Plaintiff-Intervenors, )</p> <p>VS. )</p> <p>STATE OF TEXAS, et al., )</p> <p>Defendants. )</p> <p>TEXAS STATE CONFERENCE OF )</p> <p>NAACP BRANCHES, et al., )</p> <p>Plaintiffs, )</p> <p>VS. ) CIVIL ACTION NUMBER:</p> <p>2:13-CV-291(NGR)</p> <p>NANDITA BERRY, et al., )</p> <p>Defendants. )</p>	<p>1 Ms. Faransso: 41 minutes</p> <p>2 Ms. Korgaonkar: 7 minutes</p> <p>3 Mr. Scott: 17 minutes</p> <p>4 I further certify that I am neither counsel for,</p> <p>5 related to, nor employed by any of the parties or</p> <p>6 attorneys in the action in which this proceeding was</p> <p>7 taken, and further that I am not financially or</p> <p>8 otherwise interested in the outcome of the action.</p> <p>9 Certified to by me this 30th of July, 2014</p> <p>10</p> <p>11  </p> <p>12 Chris Carpenter, Texas CSR 1151</p> <p>13 Expiration Date: 12/31/2014</p> <p>14 701 Brazos, Suite 380</p> <p>15 Austin, TX 78701</p> <p>16 (512)292-4249</p> <p>17</p> <p>18 Firm Registration No. 344</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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